

COUNCIL AGENDA

Date: May 9, 2022 Item: 7.



7.

DISTRICT OF WEST VANCOUVER
750 17TH STREET, WEST VANCOUVER BC V7V 3T3

COUNCIL REPORT

Date:	April 27, 2022
From:	Mark Chan, Deputy Chief Administrative Officer
Subject:	2195 Gordon Avenue (also known as 990 22nd Street)
File:	0500-01 / 1610-20-5200

RECOMMENDATION

THAT Council publish a Notice (or Notices) of Disposition, pursuant to sections 26 and 94 of the *Community Charter*, with respect to the proposed disposition of District-owned land, namely long term leases of proposed Parcel A and Parcel B at 990 22nd Street (also known as 2195 Gordon Avenue).

RECOMMENDATION

THAT proposed “Housing Agreement Authorization Bylaw No. 5200, 2022” regarding Kiwanis North Shore Housing Society be read a first time.

1.0 Purpose

The purpose of this report is to seek Council authorization to publish a Notice of Disposition with respect to the proposed disposition by way of long term leases of District-owned land at 990 22nd Street (also known as 2195 Gordon Avenue), namely:

- proposed Parcel A to Kiwanis North Shore Housing Society (“Kiwanis”); and
- proposed Parcel B to 2195 Gordon Avenue Limited Partnership (which was established by Darwin Properties for the purpose of the 2195 Gordon Avenue development – “2195 Partnership”).

This report also introduces proposed “Housing Agreement Authorization Bylaw No. 5200, 2022” which includes the Housing Agreement proposed to be entered into with Kiwanis for the below market rental housing at proposed Parcel A.

2.0 Executive Summary

This report seeks Council authorization to publish a Notice of Disposition with respect to the proposed disposition of Parcels A and B at 2195 Gordon Avenue (“the Property”). A plan showing Parcels A and B is attached as the final page in the proposed Housing Agreement Authorization Bylaw in **Appendix 3**.

The District’s intent in publishing the Notice is to inform the public of the proposed disposition and allow the public to provide comments.

At the June 13, 2022, Council Meeting, Council would then consider the public's comments (whether submitted in person at the meeting, or through written correspondence) when deciding whether to enter into (and execute) legally binding offers to lease with Kiwanis and 2195 Partnership.

The proposed legal agreements, and the proposed Housing Agreement with Kiwanis are attached and summarized in this report to provide the public with information about the proposed dispositions.

For clarity, at the May 9, Council Meeting, Council will not be asked to decide whether to execute the Offers to Lease. That matter will be considered by Council at the June 13, 2022, Council Meeting, after taking into account public comments in response to the Notice.

This is one procedural step in a process that represents years of work by Council and Staff. Council has already made many of the foundational decisions that have led to this point:

- Council decided in 2018 to explore options for the Property to address housing affordability and balance revenue needs.
- The District conducted initial consultation in 2019, which showed general support for the District's proposal to create housing, increase rental supply and improve affordability, with no ongoing cost to the District.
- It was in response to that initial consultation that the Adult Day Centre was incorporated into the vision for the project.
- In 2019, Council unanimously passed a resolution authorizing Staff to proceed with a rezoning application.
- In 2020, after a public hearing, Council approved the rezoning of the Property, formally allowing for rental only housing and an Adult Day Centre in Parcel A, and strata condominiums in Parcel B. Further, Council amended the Official Community Plan to incorporate Development Permit Guidelines that provide for the form and character of the buildings. The Guidelines specifically allow for two six-storey buildings on Parcel A, and one eight-storey building on Parcel B, together with a conceptual site plan that formed the basis of Darwin and Kiwanis' current development permit applications.
- In 2021, Council authorized an open competitive process through the issuing of a Request for Proposals. After carefully considering all of the responses, Council decided that Kiwanis and Darwin had the best proposals for the District.
- In mid-2021, with Council's approval, the District announced that it was in negotiations with Kiwanis, Darwin and Vancouver Coastal Health Authority on the basis of long term leases for the Property.

As directed by Council, Staff have now concluded the negotiation of the primary legal agreements.

Staff now recommend that Council publish the required Notice of Disposition in order to inform the public, and hear from the public about the proposed dispositions, before considering entry into the proposed Offers to Lease.

3.0 Legislation/Bylaw/Policy

Section 26 of the *Community Charter* provides that before a council disposes of land or improvements, it must publish notice of the proposed disposition in accordance with the public notice provisions in section 94 of the *Community Charter*. Section 483 of the *Local Government Act* authorizes local governments to, by bylaw, enter into a housing agreement regarding terms and conditions such as: rental tenure; rents; and administration and management of housing units.

4.0 Council Strategic Objective(s)/Official Community Plan

This initiative, in particular, the provision of below market rental housing at 2195 Gordon Avenue (“the Property”) supports Council’s Strategic Objective 1.0 - Housing which states “Significantly expand the diversity and supply of housing, including housing that is more affordable”.

This initiative also provides for an Adult Day Centre on the Property, which supports Council Strategic Objective 6.4 which states “Work with senior levels of government, non-profits, and private sector service providers to enable supports for healthy aging in place”.

Official Community Plan (OCP) Policy 2.1.17 supports securing new non-market rental housing units in appropriate locations close to transit and amenities. OCP Policy 2.1.21 supports the use of District-owned lands to increase the availability of more diverse and affordable housing.

5.0 Financial Implications

The proposed disposition of Parcel B to 2195 Partnership will result in \$22.195M in prepaid lease revenue to the District, and the development by 2195 Partnership of 58 strata condominiums in one eight-storey building. The proposed disposition of proposed Parcel A to Kiwanis is intended to result in 156 units of below market rental housing in two six-storey buildings, and an Adult Day Centre. The target market for the below market rental housing is moderate income people, including workers, families and seniors in West Vancouver.

As Kiwanis is required to: (1) design, build and maintain the two below market rental housing buildings; (2) operate the below market rental housing at a capped maximum of 75% of market rent; and (3) design and build the Adult Day Centre; all with no financial contribution from the District, and in order to keep the below market rents as low as possible, there is no additional financial compensation to the District for the disposition of Parcel A.

6.0 Background

The District acquired the Property at 2195 Gordon Avenue in 2014 for \$16 million. The site is located directly north of the West Vancouver Community Centre, south of Pauline Johnson Elementary School, and is 76,500 square feet (1.76 acres) in area.

In 2018, Council and staff began working with external experts to consider possible options for the development of the Property. In September 2018, Council directed Staff to proceed with public consultation on possible options with the intent to address housing affordability and balance revenue needs for other District public projects. The initial consultation took place during early 2019, and showed general support for the District's proposal to create housing, increase rental supply and improve affordability with no ongoing cost to the District.

After considering the results of the initial consultation, in April 2019, Council unanimously passed a resolution authorizing staff to proceed with a rezoning application. In July 2020, after conducting additional public consultation, and holding a public hearing, Council approved the rezoning of the Property, and Official Community Plan amendments to allow for below market rental housing and an Adult Day Centre at proposed Parcel A, and strata condominium housing at proposed Parcel B.

In 2021, the District initiated a competitive process by publicly issuing a Request for Proposals (including publication on the BC Bid website) seeking proposals from developers and housing operators to accomplish Council's objectives. After carefully considering all of the responses to the Request for Proposals, Council decided that Kiwanis and Darwin had the best proposals for the District.

In July 2021, with Council's approval, the District announced that:

1. the District was in negotiations with:
 - Kiwanis for the development and operation of the below market rental housing at proposed Parcel A;
 - Kiwanis and Vancouver Coastal Health Authority, for the development and operation of the Adult Day Centre at proposed Parcel A; and
 - Darwin Properties, for the development of the market condominium housing at proposed Parcel B;
2. the negotiations are on the basis of long-term leases (i.e. leasehold rather than freehold/fee simple); and
3. the District was working on preparing the legal agreements.

Proceeding by way of long-term leases will allow the District to recover the Property at expiry of the lease term, allowing the land to return to public ownership so a future Council can decide how to optimize the use of the Property at that time.

The District has now concluded the negotiation of the primary legal agreements with Kiwanis and Darwin. This report recommends that Council publish a Notice of Disposition (see below), and give first reading to the Housing Agreement Authorization Bylaw.

7.0 Analysis

7.1 Discussion

Notice of Proposed Property Disposition

As required by section 26 of the *Community Charter*, before disposing of proposed Parcels A and B, and before the District may execute any legally binding Offers to Lease, Council must first publish a Notice of Proposed Property Disposition setting out a description of the land, the nature of term of the proposed disposition and other details. (Parcels A and B are referred to as proposed Parcels A and B because the Property has not yet been subdivided.)

The purpose of the Notice is to inform the public about the proposed disposition. After publishing the Notice of Disposition (if Council so authorizes), Staff will summarize the themes of any correspondence received from the public in response to the Notice. Staff will then report back with those themes at the June 13, 2022, open Council Meeting, so Council can consider the correspondence, and any submissions made by the public at the June 13 Council Meeting, before deciding whether to proceed with execution of the legally binding Offers to Lease for proposed Parcels A and B.

Parcel A - Kiwanis

There are three main legal agreements relating to Parcel A:

1. Offer to Lease (**Appendix 1**);
2. Lease (**Appendix 2**); and
3. Housing Agreement (contained in the Housing Agreement Authorization Bylaw in **Appendix 3**).

The Offer to Lease and Lease are included in this report because they contain important information about the proposed disposition of proposed Parcel A.

The Housing Agreement is included in this report because it includes important information about the operation of the below market rental housing by Kiwanis, and is a critical part of the overall package when considering the disposition of proposed Parcel A to Kiwanis.

As the documents are lengthy, below is a summary of the three documents relating to proposed Parcel A.

Offer to Lease and Lease for proposed Parcel A

As Council decided to proceed by way of long term leases (i.e. leasehold), for both Parcels A and B, there is no sale and purchase agreement. The

Offer to Lease (“OTL”) would be the first legally binding document to be executed between the District and Kiwanis. The OTL is an offer and contains subject conditions that must be removed before the parties enter into the more detailed Lease. The OTL indicates the parties’ intention to enter into the future Lease, and the Lease replaces the OTL once signed.

The Lease is the “Ground Lease” that is signed after all subject conditions have been removed from the OTL and the parties are ready to complete and transfer legal ownership. The main purpose of the Lease is to give Kiwanis ownership to allow it to start construction, achieve substantial completion of the two buildings, and then operate the below market rental housing. As part of the Lease, Kiwanis is also required to design and build the Adult Day Centre, and enter into a lease with Vancouver Coastal Health Authority which will operate the Adult Day Centre at no cost to the District.

The key terms of the OTL and Lease are summarized below.

- The term of the Kiwanis Lease is 60 years. The 60 year term is intended to match the typical lifespan of the wood frame construction of the two six-storey below market rental buildings.
- Kiwanis is a registered non-profit organization. While Kiwanis is primarily known for its seniors’ housing developments, Kiwanis fully appreciates that the target market for the below market rental housing is moderate income people including workers, families and seniors in West Vancouver.
- Kiwanis is solely responsible for: (1) the design, construction and maintenance of the two below market rental buildings; (2) the design and construction of the Adult Day Centre; and (3) the operation of the 156 below market rental housing units at a capped maximum of 75% of market rent. In consideration for these three abovementioned elements, and to reduce the total capital cost of the project thereby keeping the below market rents as low as possible, the Lease payment for proposed Parcel A is a nominal \$1.
- Kiwanis has a maximum of 12 months from the date of the Lease to commence construction, and a maximum of five years to complete construction. This is to ensure that Kiwanis moves quickly to deliver the below market rental housing to the community. Kiwanis has informed that it intends to complete construction before the five year maximum period, and intends to start construction around mid-2023, and complete construction approximately two years later for a total of around three years from now.
- Because Kiwanis is only renting the units to its end-users, Kiwanis is the single owner of the two buildings and all the units. There is therefore no need to stratify proposed Parcel A, and no need for a Model Strata Lot Lease (unlike with Parcel B – see below for more information).

- Kiwanis assumes full and sole responsibility for the proper maintenance, operation, and upkeep of the two buildings for the 60 year term, at no cost to the District. The District has no obligation to make repairs or alterations to the land or buildings.
- The terms of the Lease have already been negotiated in advance and the Lease is attached to the OTL. Kiwanis is required to enter into the Lease at the closing of the transaction. Attaching the negotiated Lease to the OTL now is beneficial as the parties are already aware at an early date of their obligations upon execution of the Lease.
- Kiwanis is required to enter into a housing agreement (see below) to secure the below market rental, including stipulating that the rents will be a capped maximum of 75% of market rent, that the target market for the rental housing is moderate-income people, and other requirements for the below market rental housing.
- The Closing of the transaction (i.e. when legal title transfers) will be on the earlier of: September 19, 2022; and 30 days following issuance of a building permit for the Kiwanis project.
- Kiwanis is required to pay the District all of the usual District fees and charges, including development cost charges, utility connection and application fees, Metro Vancouver development cost charges, and permit fees.
- The Lease does not provide for any automatic right of renewal. At the expiration of the term, Kiwanis must surrender proposed Parcel A and the two buildings to the District in the condition it was required to be kept under the provisions of the Lease. Kiwanis will not be entitled to any compensation from the District for surrendering proposed Parcel A and the two buildings to the District.

Housing Agreement for proposed Parcel A

Housing agreements are a legislative tool under section 483 of the *Local Government Act* that enable municipalities to stipulate terms and conditions for affordable housing developments, including the rental tenure, rents, and administration and management of the housing units.

The Housing Agreement is included in this report so that the public can have a comprehensive understanding of how proposed Parcel A will be used to deliver below market rental housing to the community and achieve Council's goals and objectives. The proposed Housing Agreement is attached in **Appendix 3**.

Below is a summary of the key terms of the Housing Agreement.

- All dwellings will be used only as below market rental units.
- Kiwanis will be fully responsible for the management and administration of the below market rental units, and all associated

costs. Kiwanis must also maintain the rental housing in satisfactory condition throughout the term of the Lease.

- All dwellings will only be rented to eligible moderate income tenants to achieve Council's target market of moderate income people, including workers, families and seniors in West Vancouver.
- Eligible tenants will need to demonstrate, among other things, that they have a substantial connection to the community, for example, at least one member of the tenant's household has resided in West Vancouver for at least 12 months, or is employed in West Vancouver, or is enrolled in a school within the boundaries of West Vancouver. Kiwanis will also be responsible for eligibility testing including household asset and income limits.
- Rents will be capped at a maximum of 75% of market rent, with increases for continuing tenants as permitted by the *Residential Tenancy Act*.
- Kiwanis will not impose age-based restrictions on tenants of the dwellings. Kiwanis will also not prohibit tenants from having pets in the dwellings but may make reasonable rules and regulations relating to pets.
- Kiwanis will provide stipulated information on an annual basis to the District to confirm compliance with the terms of the Housing Agreement.

Housing Agreements must be authorized by bylaw, and so this report proposes that Council give first reading to the Housing Agreement Authorization Bylaw. If Council decides to publish the Notice of Disposition, and if Council subsequently at the June 13, 2022 Council Meeting decides to execute the OTL with Kiwanis, then Staff will bring back the Housing Agreement Authorization Bylaw for second and third reading, and adoption. The proposed OTL provides that the Housing Agreement must be executed prior to closing.

Parcel B – 2195 Partnership

There are three main legal agreements relating to Parcel B:

1. Offer to Lease (**Appendix 4**);
2. Lease (**Appendix 5**); and
3. Model Strata Lot Lease (which is contained in Schedule B to the Lease in **Appendix 5**).

As with the Kiwanis documents, the Offer to Lease, Lease and Model Strata Lot Lease for proposed Parcel B are included in this report because they contain important information about the proposed disposition of proposed Parcel B.

As the documents are lengthy, below is a summary of the three documents relating to proposed Parcel B.

Offer to Lease and Lease for proposed Parcel B

The Offer to Lease (“OTL”) would be the first legally binding document to be executed between the District and 2195 Partnership. The OTL is an offer and contains subject conditions that must be removed before the parties enter into the more detailed Lease.

The Lease is the “Ground Lease” that is signed after all subject conditions have been removed from the OTL. The main purpose of the Lease in the context of proposed Parcel B is to give 2195 Partnership ownership of proposed Parcel B to allow it to start construction, achieve substantial completion of the building, and stratify and sell the strata condominium units.

Once the building is stratified, the obligations of the strata unit leaseholders (i.e. the “owners” of the strata condominiums) are governed by the Model Strata Lot Lease, and 2195 Partnership’s main obligations under the Lease fall away. In this sense, the Lease can be described as a “bridge” to the Model Strata Lot Lease.

The Model Strata Lot Lease (“MSLL”) has been negotiated already, and is attached to the Lease for proposed Parcel B.

The key terms of the OTL and Lease for proposed Parcel B are summarized below.

- The term of the 2195 Partnership Lease is 99 years, which is generally standard for strata condominium long term leases.
- The consideration for the 99 year lease is prepaid rent of \$22.195M payable in one lump sum to the District upon the closing of the transaction.
- Closing of the transaction (i.e. when legal title transfers) will be on the earlier of: September 19, 2022; and 30 days following issuance of a building permit for the project on proposed Parcel B.
- 2195 Partnership has a maximum of 12 months from the date of the Lease to commence construction, and a maximum of five years to complete construction.
- The terms of the Lease have already been negotiated in advance and are attached to the OTL.
- 2195 Partnership is required to pay the District all of the usual District fees and charges, including all development cost charges, utility connection and application fees, and permit fees.
- The OTL includes a parent guarantee whereby Darwin Properties (Canada) Limited guarantees the performance of all the obligations of 2195 Partnership contained in the OTL and Lease. This

provides additional security to the District for the obligations of 2195 Partnership.

- Once the leasehold strata plan has been filed in the Land Title Office, the leasehold strata plan will operate as a conversion of the Lease into individual names in the name of the strata condominium unit leaseholders (i.e. the purchasers of the condominium units). After conversion of the Lease, each strata lot will be held for the unexpired amount of the term separately from and independently of each of the other strata lots.

Model Strata Lot Lease for proposed Parcel B

The MSLL is the main governing document for the strata unit leaseholders (i.e. the purchasers of the strata condominiums). The MSLL sets out the obligations among the strata unit leaseholders, the strata corporation, and the District for the balance of the 99 year term. The strata corporation becomes a party to the MSLL for the purpose of providing covenants in connection with the maintenance and repair of the common property.

The MSLL is first executed by the District, Darwin and the strata corporation. Every purchaser of a unit will need to execute a strata lot lease based on the “model” MSLL, thereby becoming a lessee.

Many of the provisions in the MSLL are similar to terms in the Lease, and so will not be repeated here. The key terms of the MSLL for proposed Parcel B are summarized below.

- The lessee (i.e. purchaser) leases the strata lot (i.e. the strata unit and share of the common property) for the balance of the 99 year term.
- The lessee shall pay all District fees, charges, levies and utilities imposed by the District. The strata corporation shall pay all third party utility charges used or supplied to the common property (i.e. that part of the building that is not part of a strata lot), common facilities or the strata corporation throughout the term.
- The lessee shall keep the strata lot in good order and condition, and the strata corporation shall maintain and repair the exterior of the building, building infrastructure and all common areas.
- The District is under no obligation whatsoever to carry out any repair, maintenance or replacement of any improvement, landscaping or other attribute of the building or the lands. This makes it clear that it is the responsibility of the lessee and strata corporation to maintain and repair the building and lands.
- The MSLL is subject to the bylaws of the strata corporation always permitting a strata lot holder to rent their strata lot to a tenant under the *Residential Tenancy Act*.

- At the expiration of the term, the lessee shall surrender the strata lot including the common property and common facilities to the District in the condition it was required to be kept under the provisions of the MSLL.
- The District has no obligation to renew the MSLL and there is no automatic right of renewal of the MSLL. This is to make it clear to purchasers that the District will recover the land and building upon expiry of the term.
- Upon expiry of the term, the District will purchase the lessee's interest in the strata lot, not including the land value, in accordance with the terms of the MSLL. In summary, the District shall only pay to the lessee the depreciated value of their strata lot (i.e. the improvements) at the expiry of the 99 year lease, because the lessee has no ownership in the land at expiry of the term. In other words, upon expiry of the term, the District will pay for the depreciated value of the building, but not the land. The MSLL makes it clear that the lessee does not hold the strata lot in fee simple and does not have any fee simple interest in the land, and is not entitled to any of the value of the land in calculating the payment to be made by the District to the lessee on expiry of the term.

Next Steps

After publishing the Notice of Disposition (if Council so authorizes), Staff will summarize the themes of any correspondence received from the public in response to the Notice. Staff will then report back with those themes at the June 13, 2022, Council Meeting, so Council can consider the correspondence, and any submissions made by the public at the June 13 Council Meeting, before deciding whether to proceed with execution of the legally binding Offers to Lease for proposed Parcels A and B.

If at the June 13 Council Meeting, Council decides to execute the Offers to Lease, Staff will bring back the Housing Agreement Authorization Bylaw for second and third reading, and adoption.

7.2 Sustainability

The 2195 Gordon Avenue initiative provides for additional housing close to amenities and transit. The location of the development will allow less reliance on vehicles, support transit use and encourage non-vehicle trips. The design guidelines applicable to the site require all development to comply with the District's Sustainable Buildings Policy, including Low-carbon Energy System pathway and the achievement of the step higher than that required by the BC Energy Step Code required by the District's updated Building Bylaw. The initiative also provides social sustainability through the provision of below market rental housing and the Adult Day Centre, and financial sustainability through the \$22.195M prepaid lease for proposed Parcel B.

7.3 Public Engagement and Outreach

Significant public consultation for the 2195 Gordon Avenue initiative took place during the initial consultation in 2019, and the public consultation which was part of the rezoning and OCP amendment process in 2020.

7.4 Other Communication, Consultation, and Research

Staff have consulted with the Municipal Solicitor and multiple divisions with respect to the subject matter of this report including: Planning & Development Services; Engineering & Transportation; and Financial Services.

8.0 Options

8.1 Recommended Option

This report recommends that Council publish a Notice of Disposition with respect to the proposed dispositions of Parcels A and B, and that Council introduce the Housing Agreement Authorization Bylaw by giving it first reading.

8.2 Considered Options

Council may proceed as recommended, defer, or request additional information.

Author:



M. Chan

Appendices: Appendix 1 – Offer to Lease for Parcel A (Kiwanis)
Appendix 2 – Lease for Parcel A (Kiwanis)
Appendix 3 – Housing Agreement Authorization Bylaw (Kiwanis)
Appendix 4 – Offer to Lease for Parcel B (2195 Partnership)
Appendix 5 – Lease for Parcel B (2195 Partnership) which includes
the Model Strata Lot Lease

APPENDIX 1

KIWANIS OFFER TO LEASE

GORDON AVENUE – PARCEL A

THIS OFFER (the “**Offer**”) is dated for reference , 2022 (the “**Reference Date**”),

BETWEEN:

THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER

750 – 17th Street, West Vancouver, BC V7V 3T3

(the “**Lessor**”)

AND:

KIWANIS NORTH SHORE HOUSING SOCIETY

100 – 975 21st Street, West Vancouver, BC, V7V 0B5

(the “**Lessee**”)

WHEREAS:

- A. The Lessor is the owner of title in, or has a registered interest in, and to certain lands with a civic address of 2195 Gordon Avenue, West Vancouver, BC, more particularly known and described with the legal description set out in Schedule A attached hereto (the “**District Lands**”).
- B. Prior to the registration in the Land Title Office of the Lease herein defined, the Lessor intends to effect the subdivision of the District Lands pursuant to the full registration of a subdivision plan (the “**Subdivision Plan**”) with lot lines drawn substantially in accordance with the draft plan (the “**Lot Line Plan**”) attached as Schedule B to create, *inter alia*:
 - a. one parcel substantially shown as newly-created “Proposed Lot A” on the Lot Line Plan (“**Parcel A**”); and
 - b. one parcel substantially shown as newly-created “Proposed Lot B” on the Lot Line Plan (“**Parcel B**”).
- C. Pursuant to a memorandum of understanding made between the Lessor, the Lessee and 2195 Gordon Avenue Limited Partnership (“**2195 Gordon**”), as amended, dated for reference July, 2021 (the “**MOU**”), the Lessor wishes to lease to the Lessee and the Lessee wishes to lease from the Lessor Parcel A (as defined hereinafter) for the purpose of constructing buildings comprised of leasehold residential below market rental units and an Adult Day Centre on Parcel A (the “**Buildings**”), on the terms and conditions of this Offer and in the Lease (as defined hereinafter).
- D. The Lessor agrees to execute directly in favour of the Lessee, or to a third party or to third parties, as applicable, and as requested by the Lessee in accordance with Section 9.7 of this Offer, a lease in the form and with the content attached as Schedule C in respect of Parcel A (the “**Lease**”).

NOW THEREFORE:

1.0 OFFER TO LEASE

1.1 The Lease. The Lessee offers to lease Parcel A from the Lessor for an aggregate term commencing on the effective date of the Lease (as set out in the first line on page one of the Lease) (the “**Commencement Date**”) inclusive of:

- (a) a period of time from the Commencement Date of up to the earlier of:
 - (i) the date of the first Certificate of Occupancy in respect of both Buildings; or
 - (ii) 60 months following the Commencement Date; and
- (b) a 60 year term commencing on the earlier of:
 - (i) the date of the Certificate of Occupancy in respect of both the Buildings; or
 - (ii) 60 months following the Commencement Date,

on the terms and conditions set out in this Offer and in the Lease, free and clear of all liens, charges and encumbrances except for the encumbrances set out in Schedule D (collectively, the “**Permitted Encumbrances**”) as relevant to Parcel A and subject to the restrictions on land use contained in a provision of a bylaw, permit, plan, policy, guideline, regulation, resolution, order or any other similar document enacted or passed by the Province of British Columbia, Canada or the Council of the District of West Vancouver, including the:

- (a) Development Procedures Bylaw No. 4940, 2017;
- (b) Official Community Plan Bylaw No 4985, 2018 (the “**Official Community Plan**”);
- (c) Zoning Bylaw No. 4662, 2010 (the “**Zoning Bylaw**”);
- (d) Building Bylaw No. 4400, 2004;
- (e) Fees and Charges Bylaw No. 5025, 2019;
- (f) Development Cost Charge Bylaw No. 3801, 1993; and
- (g) restrictive or statutory covenants, housing agreement under s. 483 of the *Local Government Act* and statutory rights of way, required by the District of West Vancouver as a government or the District of West Vancouver’s approving officer in connection with the development of the Project (as defined hereinafter) on Parcel A;

each as amended or replaced from time to time before or after the date of this Offer, and every other applicable District of West Vancouver bylaw; or contained in all other lawful municipality, approving officer, building official or provincial or federal requirements governing land use and the construction, renovation, maintenance, repair and replacement of any building on Parcel A (collectively, the “**Development Controls**”) which are in effect from time to time, the forms of each of which (as at the date of this Offer) have been reviewed and approved by the Lessee, and the Lessee agrees to be bound by same.

For the purposes of this Offer, the term “**Certificate of Occupancy**” shall mean a document issued by the Corporation of the District of West Vancouver in its capacity as a governmental authority accepting evidence of compliance by any building constructed, renovated, maintained, repaired, or replaced on Parcel A with applicable building codes and other laws, and indicating the building to be in a condition suitable for occupancy.

1.2 The Rent.

In exchange for the Lessee agreeing to design, build and operate the residential rental housing at below market rents pursuant to the housing agreement, and the Lessee agreeing to design and build the Adult Day Centre, and the Lessee’s other obligations contained in this Offer and the housing agreement, the rent payable by the Lessee to the Lessor for the entire term of the Lease will be one dollar (\$1.00) (the “**Basic Rent**”), subject to adjustment under Section 1.5 of this Offer.

1.3 Particulars of the Project.

The anticipated particulars of the Lessee’s proposed improvements on Parcel A intend to be a six storey leasehold below market rental housing development project, inclusive of an Adult Day Centre to be operated by Vancouver Coast Health Authority (the “**Project**”), developed in accordance with the Development Controls all as applicable to Parcel A from time to time.

The Lessee’s use of Parcel A will also be subject to the Permitted Encumbrances, and each of the agreements contemplated therein, as applicable to Parcel A. The Lessee at its sole cost will observe, perform and comply with the obligations under the relevant Permitted Encumbrances and the requirements under the Development Controls. The Lessee will indemnify and save harmless the Lessor and its elected officials, officers, employees, consultants, solicitors and agents (collectively, the “**Indemnified Parties**”) against all losses the Lessor or its Indemnified Parties or any one or more of them may incur as a result of the default under any of the Lessee’s obligations under the Permitted Encumbrances.

1.4 Payment of the Basic Rent.

- (a) Subject to the adjustments described herein, the Basic Rent will be payable by the Lessee as follows by payment of:
 - (i) a deposit in the amount of \$100,000.00 (the “**Deposit**”) by way of cheque, certified cheque or bank draft payable to the Lessor’s solicitors, in trust on or before the fifth (5th) business day following receipt by the Lessee of a copy of this Offer, executed by the Lessor accepting this Offer (the “**Acceptance Date**”), to be held by the Lessor’s solicitors in an interest bearing account, pursuant to the terms of this Offer, until the Closing Date;
 - (ii) subject to section 9.2, the balance in the amount of one (\$1.00) dollar (subject to adjustments under Section 1.5 of this Offer) of the Basic Rent on the Closing Date, pursuant to Article 6.0 of this Offer.
- (b) Upon default by the Lessee hereunder, including failure to enter the Lease pursuant to this Agreement, the Lessor’s solicitors are irrevocably directed to release to the Lessor the Deposit then paid together with accrued interest thereon which will be retained by the Lessor as liquidated damages for breach of contract without prejudice to any other remedies available to the Lessor at law or in equity.

- (c) Upon default by the Lessor hereunder, or upon Closing under section 6.0, the Lessor's solicitors are irrevocably directed to release the Deposit to the Lessee on the Closing Date together with accrued interest, provided that in the event of default by the Lessor, the release of the Deposit is without prejudice to any other remedies available to the Lessee at law or in equity.

1.5 Adjustments

All adjustments with respect to taxes, utilities and all other items normally adjusted between a lessor and lessee on the long term lease of land shall be made with respect to Parcel A as of the Closing Date.

1.6 Documents

The Lessor shall deliver to the Lessee, within seven (7) days following the Acceptance Date, accurate and complete copies of the following documents, if and to the extent known to be in the possession or control of the Lessor, as determined by the Deputy Chief Administrative Officer, after due and diligent inquiry:

- (a) A scope of work for offsite works and services required by the Corporation of the District of West Vancouver in its capacity as a local government, subject to the District's statutory powers and its reasonable due diligence prior to subdivision of the District Lands and issuance of a building permit for the Buildings, to be constructed and installed by the Lessor or Lessee, as determined by the Lessor, and solely paid for by the Lessee in connection with the Development Controls as a condition of building permit and occupancy permit issuance with respect to the Buildings, subdivision of the District Lands, or both;
- (b) copy of the standard template servicing agreement in blank form typically required by the District, its approving officer and its building official, in connection with the granting of development approvals;
- (c) copies of any geotechnical, engineering, survey, soil test or other reports or studies relating to the District Lands or any part thereof, if any, affecting the District Lands;
- (d) copies of any traffic studies, archaeological studies and zoning studies related to development of the District Lands or any part thereof;
- (e) copies of all other existing agreements and contracts in force as of the Acceptance Date affecting any aspect of the District Lands, or the District Lands use, development or construction; and
- (f) copies of all existing environmental reports or studies for the District Lands, including all environmental assessment reports, together with written authorizations from the Lessor to the issuers permitting the issuers to consult with the Lessee (provided that any fees or disbursements charged by the issuers for such consultation with the Lessee are to be paid for by the Lessee),

(collectively, the "**Documents**").

Any documents in the nature of the Documents which come into the Lessor's possession or control after the initial delivery thereof shall be delivered by the Lessor to the Lessee as soon as reasonably possible and the Lessor shall so advise the Lessee in writing.

Notwithstanding the foregoing, and for greater certainty, the Lessor is not required to deliver any Documents which were: generated in the Lessor's capacity as a local governing authority over the District Lands, as opposed to in its capacity as a land owner of the District Lands; previously delivered or made available to the Lessee; or generated by or on behalf of the Lessee and previously delivered to the Lessor.

2.0 REPRESENTATIONS AND WARRANTIES

2.1 Representations and Warranties of the Lessor. The Lessor hereby represents and warrants to the Lessee with the intent that the Lessee shall rely thereon in making this Offer and in concluding the Lease contemplated herein, that as of the date hereof (unless otherwise specified) and on the Closing Date (unless this Offer is earlier terminated):

- (a) the Lessor is resident in Canada within the meaning of the *Income Tax Act* (Canada);
- (b) the Lessor has all requisite authority to grant a Lease of Parcel A, free and clear of all liens, charges and encumbrances save and except for the Permitted Encumbrances, subject to subdivision of the District Lands to create Parcel A under Section 3.2(g);
- (c) Parcel A is subject to the land use restrictions set out in the Development Controls and the Permitted Encumbrances; and
- (d) the Lessor shall deliver Parcel A on the Closing Date in the same condition (including environmentally, geotechnical or otherwise) that it was on the date that the Lessee satisfied or waived the Lessee's condition set out in Section 4.2(a).

2.2 Representations and Warranties of the Lessee. The Lessee hereby represents and warrants to the Lessor with the intent that the Lessor shall rely thereon in accepting this Offer and in concluding the Lease contemplated herein, that as of the date hereof (unless otherwise specified) and on the Closing Date (unless this Offer is earlier terminated):

- (a) the Lessee is resident in Canada within the meaning of the *Income Tax Act* (Canada); and
- (b) the Lessee has all requisite authority to enter into a Lease of Parcel A.

2.3 Survival of Representations and Warranties. The representations and warranties contained in this Article 2.0 shall survive the Closing Date and shall continue in full force and effect for the benefit of the recipient party, for a period of two (2) years after the Closing Date. Notwithstanding the foregoing, the representations and warranties contained in Section 2.1(d) shall survive the Closing Date and remain in full force and effect indefinitely.

3.0 COVENANTS

3.1 Covenants of the Lessee. The Lessee hereby covenants and agrees to execute and deliver to the Lessor, on or before the Closing Date (unless otherwise specified), the following documents in registrable form, where required to be in registrable form:

- (a) an assumption agreement agreeing to be bound by all the Permitted Encumbrances in respect of Parcel A;
- (b) the Lease in the form and with the content attached as Schedule C;
- (c) an agreement reasonably satisfactory to the Lessor between 2195 Gordon and the Lessee to provide for the completion of the transactions contemplated within each party's offer to lease with the Lessor, for Parcel A and Parcel B, respectively, (including registration of the leases for Parcel A and Parcel B) on the same day
- (d) a housing agreement governing the Buildings and operation of the residential below market rental housing under s. 483 of the *Local Government Act*;
- (e) an executed Adult Day Centre offer to lease and draft lease between the Lessee and Vancouver Coastal Health Authority; providing for, among other things, an Adult Day Centre with approximately 3000 square feet of interior space with adjacent outdoor space of approximately 1,000 square feet, to be constructed by the Lessee at no cost to the Lessor; and
- (f) such other agreements or other documents as the Lessor may require in acting reasonably, in connection with the Lessee's obligation under this Offer to be bound by the Permitted Encumbrances. Such agreements will include a covenant whereby the Lessee will indemnify, release and save harmless the Lessor and its Indemnified Parties from and against all losses the Lessor or its Indemnified Parties or any one or more of them may incur as a result of a default under any of the Lessee's obligations under the Permitted Encumbrances.

The Lessee hereby acknowledges that the execution and delivery by the Lessee to the Lessor of a final completed onsite and offsite works and services servicing agreement to the satisfaction of the District will be required by the District prior to the issuance of building permit for the Buildings (the "**Servicing Agreement**"), the agreement being subject to the final detailed scope to be determined by the Corporation of the District of West Vancouver in its capacity as a local government as described in Section 1.6(a) and subject to delivery to the Lessee by the Lessor of the standard template servicing agreement as described in Section 1.6(b).

3.2 Covenants of the Lessor. The Lessor hereby covenants and agrees with the Lessee that at any time after this Offer has been accepted by the Lessor and continuing until the Closing Date (and unless this Offer is earlier terminated), the Lessor will:

- (a) permit the Lessee and the Lessee's employees, engineers, agents and advisors (and, as applicable, third party assignees of the Lessee and such assignees' respective employees, engineers, agents and advisors) to enter onto the District Lands and carry out such inspections, tests, studies, surveys and investigations of the District Lands as the Lessee may reasonably require, provided that the Lessee shall make good, at the Lessee's cost and to the reasonable satisfaction of the Lessor, any damage caused by the Lessee in carrying out the same;

- (b) act in good faith and co-operate with the Lessee in respect of any reasonable requests made by the Lessee to the Lessor as owner of the District Lands in respect of the development of Parcel A including executing, upon the request of the Lessee, any applications, licenses, permits or other documentation required by the Lessor, or by the District of West Vancouver as a government, or any other governmental authority in connection therewith provided that the Lessee will not, without the Lessor's consent, make any commitments which will result in any liability or contravention of enactments including District of West Vancouver bylaws, or be otherwise prejudicial, to the Lessor, if the lease transactions contemplated herein do not complete and, in any event, the Lessee hereby agrees to indemnify, release and save harmless the Lessor against any such liability;
- (c) give to the Lessee and its representatives and agents upon reasonable notice, full access to the Lessor's Records (as defined in Section 7.1(a)), except such records that may be protected from disclosure under the *Freedom of Information and Protection of Privacy Act* (British Columbia);
- (d) not enter into any contract or agreement or any transaction whatsoever in respect of Parcel A which is not a Permitted Encumbrance, other than the Development Controls, unless approved by the Lessee, acting reasonably, or otherwise expressly contemplated by this Offer;
- (e) subject to satisfaction of the conditions precedent described herein in accordance with their terms, grant a Lease to the Lessee, or to a permitted third party as requested by the Lessee in accordance with Section 9.7 of this Offer, of Parcel A on the Closing Date, free and clear of all encumbrances except the Permitted Encumbrances;
- (f) discharge from Parcel A on or before the Closing Date, all Development Controls which are not required for the development of the Project on Parcel A, as determined by the Lessor, acting reasonably;
- (g) on or before the Lessee's Third Condition Removal Date, cause the Subdivision Plan to be fully registered in the Land Title Office to raise title to Parcel A and Parcel B, which plan will be pre-approved by the Lessee acting reasonably in respect of the dimensions and boundary lines of Parcel A. The Lessor shall be responsible for all costs associated with preparing and registering the Subdivision Plan, including all costs relating to the filing and final registration thereof;
- (h) act reasonably at all times with respect to the processing and issuance of any permit applied for by the Lessee in connection with the Project (including but not limited to any development permit) and, provided the Lessor is the owner of Parcel A and the Lease has not yet been executed and delivered by the parties thereto, the Lessor (in its capacity as a government body) may issue any permit with respect to the Project to the Lessor (in its capacity as the owner) or an apartment rental centre to a party acceptable to the Lessee in respect of the Project, it being acknowledged by the parties that the Lessor or any party acceptable to the Lessor, acting reasonably, may make the application for any such permit as agent on behalf of the Lessor in accordance with (if required by the Lessor) an agency agreement that may be entered into by the Lessor and the Lessee or such party; and

- (i) deliver to the Lessor's solicitors, on or before the Closing Date, any of the documents referred to in Section 3.1 to which the Lessor is a party and which the Lessor has executed, acting reasonably.

3.3 Survival.

The terms of this Article 3.0 shall survive the Closing Date and shall continue in full force and effect for the benefit of the applicable party hereto in accordance with the terms of this Article 3.0.

4.0 **CONDITIONS**

4.1 Condition of the Lessor's Obligation. The Lessor's obligation to carry out the transactions contemplated herein is subject to the fulfillment of the following conditions on or by the applicable date described below, unless and to the extent satisfied or waived in writing by the Lessor:

- (a) delivery by the Lessee to the Lessor, within seven (7) days of the Acceptance Date, of the draft terms and conditions of a cross access agreement among the Lessor as the fee simple owner of Parcel A, the Lessor as the fee simple owner of Parcel B, and the Corporation of the District of West Vancouver in its capacity as a local government, for the shared use by the owners (including 2195 Gordon and the Lessee as leasehold owners) of a single underground parking ramp and other building elements (collectively, the "**Parking Ramp**"), all of which will be located on Parcel B, that arise from the shared use of portions of the ground level landscaping and underground works and facilities, including (i) a section 219 *Land Title Act* covenant in favour of the Lessor restricting the use of Parcel B except in accordance with the cross access agreement, and (ii) terms that permit the completion of the Parking Ramp by a date in respect of which an occupancy certificate is expected to be issued for the project to be constructed by the Lessee on Parcel A (the "**Cross Access Agreement**");
- (b) the Lessor's satisfaction, in its sole discretion, as to the final terms and conditions of the Cross Access Agreement, on or before the date that is thirty (30) days after the Lessee has satisfied or waived the Lessee's conditions set out in Sections 4.2(a) and 4.2(b) (the "**Lessor's Condition Removal Date**");
- (c) the final registration of the Subdivision Plan and the rezoning of the District Lands (to amend the location of the lot line between Parcel A and Parcel B on plan in section 661.03 of the District of West Vancouver's Zoning Bylaw No. 4662, 2010 to align with the location of such lot line as set forth on the Lot Line Plan) are, in the opinion of the Lessor acting reasonably, consistent with the development permit application made by the Lessee and 2195 Gordon in respect of Parcel A and Parcel B, respectively, on or before the Lessee's Third Condition Removal Date (as defined herein);
- (d) the Lessor's satisfaction, in its sole discretion, with the waiver or satisfaction of the Parcel B Conditions Precedent that are specified in an offer to lease between the Lessor and 2195 Gordon dated ●, 2022 in respect of Parcel B, on or before the Closing Date;
- (e) adoption by the District of West Vancouver Council of the bylaw to enter into the housing agreement under s. 483 of the *Local Government Act*, and execution and

delivery of the housing agreement by the parties, both on or before the Closing Date;

- (f) delivery to the Lessor of an executed Adult Day Centre offer to lease and draft lease between the Lessee and Vancouver Coastal Health Authority, on or before Closing Date;
- (g) the documents and sums of money referred to in Section 6.3 having been executed and delivered as therein provided on or before the Closing Date; and
- (h) the representations and warranties made herein by the Lessee shall be true and accurate with the same effect as if made on and as of the Closing Date.

4.2 Condition of the Lessee's Obligation. The Lessee's obligation to carry out the transactions contemplated herein is subject to the fulfilment of each of the following conditions on or by the applicable date described below, unless and to the extent satisfied or waived in writing by the Lessee:

- (a) the Lessee's satisfaction, in its sole discretion, as to the state of Parcel A, including without limitation, the title, the Permitted Encumbrances, the physical condition of Parcel A, and the feasibility and suitability of the Project on or before the date that is fourteen (14) days after the Lessor providing the Documents to the Lessee (the "**Lessee's Initial Condition Removal Date**");
- (b) the Lessee's satisfaction, in its sole discretion, with the scope of the work for offsite works and services referred to in Section 1.6(a) and the estimated costs associated therewith on or before the Lessee's Initial Condition Removal Date;
- (c) the Lessee's satisfaction, acting reasonably, , as to the final terms and conditions of the Cross Access Agreement, on or before the date that is thirty (30) days after the Lessee has satisfied or waived the Lessee's conditions set out in Sections 4.2(a) and 4.2(b) (the "**Lessee's Second Condition Removal Date**");
- (d) the Lessee's satisfaction, acting reasonably, that the Subdivision Plan is consistent with the development permit application made by the Lessee in respect of Parcel A on or before the Lessee's Second Condition Removal Date;
- (e) the waiver or satisfaction of the Parcel B Conditions Precedent that are specified in an offer to lease between the Lessor and 2195 Gordon dated ●, 2022 in respect of Parcel B, on or before the Closing Date;
- (f) the final registration of the Subdivision Plan and the rezoning of the District Lands (to amend the location of the lot line between Parcel A and Parcel B on plan in section 661.03 of the District of West Vancouver's Zoning Bylaw No. 4662, 2010 to align with the location of such lot line as set forth on the Lot Line Plan) are, in the opinion of the Lessee, acting reasonably, consistent with the development permit application made by the Lessee in respect of the Parcel A, on or before the date that is twenty-one (21) days after the Lessee has satisfied or waived all of the Lessee's conditions set out in Sections 4.2(a), 4.2(b), 4.2(c), 4.2(d) and 4.2(e) (the "**Lessee's Third Condition Removal Date**");
- (g) adoption by the District's Council of a bylaw to enter into the housing agreement under s. 483 of the *Local Government Act*, on or before the Closing Date;

- (h) that the documents referred to in Section 6.2 shall have been executed and delivered as therein provided, on or before the Closing Date;
- (i) title to Parcel A shall be free and clear of all liens, charges and encumbrances, save and except for the Permitted Encumbrances, as of the Closing Date; and
- (j) the representations and warranties made herein by the Lessor shall be true and accurate with the same effect as if made on and as of the Closing Date.

4.3 Satisfaction of Conditions. Each party hereto agrees to proceed in good faith and with promptness and diligence to attempt to satisfy the conditions contained in Sections 4.1 and 4.2 which are within its reasonable control. The Lessee understands that if the Lessor waives the conditions contained in Section 4.1, then the Lessee will be obligated to close in accordance with Article 6.0, so long as the conditions in Section 4.2 have been satisfied or waived by the Lessee within the times limited therefor, or any extension thereof.

4.4 Waiver and Termination. In case any condition contained in Sections 4.1 and 4.2 has not been satisfied by the deadlines set therefor, the party for whose benefit the condition has been included may terminate this Offer by notice in writing to the other party, in which event, subject to section 1.4, the Deposit together with accrued interest shall be promptly paid to the Lessee; PROVIDED however, that the party entitled to termination shall be entitled to waive compliance with any condition in whole or in part, if it sees fit to do so, without prejudice to any of its other rights under this Offer, or of its rights of termination in the event of non-performance of any other condition in whole or in part. Any waiver given hereunder shall be in writing. This Section 4.4 shall survive the termination of the agreement created by the Lessor's acceptance of this Offer.

4.5 Consideration for Conditions. As the conditions described in Section 4.1 and Section 4.2 are for the sole benefit of the Lessor and Lessee, respectively, and may be waived by written notice to the other party prior to the dates specified therein,

- (a) in consideration of a \$10.00 non-refundable sum paid by the Lessor to the Lessee, and other good and valuable consideration (the receipt and sufficiency of which the Lessee acknowledges), the Lessee will allow the Lessor the benefit of the conditions described in Section 4.1 and agrees that this Offer, and the agreement created by the Lessor's acceptance of this Offer, is irrevocable after the Acceptance Date; and
- (b) in consideration of a \$10.00 non-refundable sum paid by the Lessee to the Lessor, and other good and valuable consideration (the receipt and sufficiency of which the Lessor acknowledges), the Lessor will allow the Lessee the benefit of the conditions described in Section 4.2 and agrees that this Offer, and the agreement created by the Lessor's acceptance of this Offer, is irrevocable after the Acceptance Date.

5.0 **RISK**

5.1 The Passing of Risk. Parcel A shall be at the risk of the Lessor until completion of the Closing and thereafter shall be at the risk of the Lessee in accordance with the terms of the Lease.

6.0 CLOSING ARRANGEMENTS

6.1 The Closing. Subject to satisfaction or waiver (as applicable) of the conditions precedent in Article 4.0, the closing of the transaction contemplated herein (the “**Closing**”) will occur on the earlier of: (i) September 19, 2022; or (ii) the date that is thirty (30) days following the issuance of a building permit for the Buildings (the “**Closing Date**”), unless the Lessor and Lessee consent in writing to an alternative date.

6.2 Documents of the Lessor. No later than two (2) business days before the Closing Date the Lessor shall deliver to the Lessee's solicitors the following:

- (a) the Lease in final form, duly executed by the Lessor in registrable form leasing Parcel A to the Lessee, or to a third party(ies) as directed by the Lessee in accordance with Section 9.7 of this Offer, free and clear of all liens, charges and encumbrances, save and except for the Permitted Encumbrances applicable to Parcel A;
- (b) any documents that are required to be executed for the Closing by the Lessor under this Offer, including without limitation under Section 3.2, duly executed by the Lessor in registrable form (to the extent applicable);
- (c) the Lessor's Statement of Adjustments signed by the Lessor;
- (d) Cross Access Agreement, duly executed by the Lessor in registrable form; and
- (e) a certificate of the Lessor's Corporate Officer certifying as true the resolution of Council of the Lessor authorizing the granting of the Lease to the Lessee.

6.3 Documents of the Lessee. On or before the Closing Date the Lessee shall deliver to its solicitors (or, with respect to the documents in Section 6.3(b), to the lender's solicitors):

- (a) If applicable or required, details of a wire transfer into the trust account of its solicitors, or bank draft payable to its solicitors in trust, for the portion of the Basic Rent due at the time of the Closing (as adjusted pursuant to section 6.4 and other provisions of this Offer);
- (b) subject to the terms and conditions of the Lease, such documents as are needed to effect registration of the Lessee's mortgage financing, if any;
- (c) the Lessee's Statement of Adjustments signed by the Lessee;
- (d) a true copy of the Lease in final form for Parcel A duly executed by the Lessee, or a third party(ies) as directed by the Lessee in accordance with Section 9.7 of this Offer;
- (e) a true copy of the documents that are required to be executed for the Closing by the Lessee, (or a third party(ies) as directed by the Lessee in accordance with Section 9.7 of this Offer), under this Offer, including without limitation under Section 3.1; and
- (f) if applicable, a certificate duly executed by the Lessee relating to the payment of federal Goods and Services Tax, in the form attached hereto as Schedule E, unless the Lessor and the Lessee, each acting reasonably on the basis of tax

advice, determine that the federal Goods and Services Tax does not apply, including where the Project on Parcel A is a “residential complex”.

6.4 Closing Escrow. Following receipt of the funds referred to in Subsection 6.3(a), the Lessee shall cause its solicitors to submit the Cross Access Agreement and the Lease for registration in the appropriate Land Title Office, on the Closing Date, and following the acceptance of the Cross Access Agreement and the Lease for registration, the Lessee’s solicitors shall make available a solicitor’s trust cheque, or funds in a manner acceptable to the Lessor, or deliver to the Lessor’s solicitors evidence that they have wire transferred to the bank account of the Lessor (details of the bank account to be provided by the Lessor prior to the Closing Date), the adjusted balance of the Basic Rent shown on the Lessor’s Statement of Adjustments to be payable on the Closing Date (the “**Balance Due**”) upon the Lessee’s solicitor conducting a post acceptance search of Parcel A for the Closing at the Land Title Office disclosing only the following:

- (a) the existing title number for Parcel A;
- (b) the Permitted Encumbrances for Parcel A;
- (c) the pending registration numbers of the Cross Access Agreement;
- (d) the pending registration number of the Lease; and
- (e) the pending numbers assigned to any security documents applicable to any mortgage financing arranged by the Lessee, or a third party(ies) as directed by the Lessee in accordance with Section 9.7 of this Offer, in connection with the Lease, and any other charges granted by the Lessee, or a third party(ies) as directed by the Lessee in accordance with Section 9.7 of this Offer.

6.5 Payment of Fees and Taxes. Each party shall be responsible for its own legal fees. The Lessee shall be responsible for payment of the Goods and Services Tax (if applicable), Property Transfer Tax (if applicable), and any registration fees in connection with the Lease. The Lessee hereby releases, and will defend and hold harmless, the Lessor and its Indemnified Parties from any and all actions, causes of action, suits, judgments, proceedings, demands and claims, whether at law or in equity, losses, damages, expenses and costs (including legal fees and disbursements on an indemnity basis) of any kind or nature whatsoever, at law or in equity, for any damage, loss, arising out of or in any way related to any property transfer tax payable to the Ministry of Finance (British Columbia) in connection with the transactions contemplated herein.

6.6 Possession. The Lessor shall deliver vacant possession of Parcel A to the Lessee and/or to any third party(ies) as directed by the Lessee in accordance with Section 9.7 of this Offer, on the Closing Date, subject only to the charges represented by the pending registration numbers referred to in Section 6.4 and the Permitted Encumbrances.

6.7 Preparation of Closing Documents. The Statement of Adjustments, the Lease, the documents referred to in Section 3.1 and the certificate relating to the payment of the federal Goods and Services Tax shall be prepared by the solicitors for the Lessee, all as applicable.

7.0 **ACKNOWLEDGEMENTS**

7.1 Lessee's Acknowledgements. The Lessee hereby represents, acknowledges and agrees that:

- (a) the Lessee has been given an opportunity to review any reports and materials pertaining to the District Lands which were made available by the Lessor, including the Documents, (the "**Lessor's Records**") and to verify the accuracy of the information in the Lessor's Records, but acknowledges that it makes this Offer without relying on any representation or warranty from the Lessor, as either regulator or lessor, or any of its directors, officers, agents, employees or consultants in respect of:
 - (i) the accuracy or completeness of the information contained in the Lessor's Records;
 - (ii) the physical condition of, or any other matter relating to Parcel A, including governmental requirements for the development of Parcel A;
- (b) Parcel A is acceptable to the Lessee in an "as is" condition;
- (c) subject to the transactions contemplated herein on the Closing Date, the Lessee will:
 - (i) pay the District of West Vancouver applicable fees and development cost charges (but not including any development cost charges payable in connection with the subdivision of the District Lands which are a Lessor cost pursuant to Section 3.2(g)), if any, to obtain approvals in connection with the Development Controls, in respect of Parcel A only;
 - (ii) pay all utility connection and application fees, including but not limited to connection and application fees payable to connect electrical, gas, telephone, cable services and the water and storm and sanitary sewer systems to Parcel A;
 - (iii) pay all fees and charges including development cost charges imposed by the Greater Vancouver Sewerage and Drainage District and Greater Vancouver Water District with respect to Parcel A; and
 - (iv) prior to issuance of building permits for the Buildings, execute and deliver the Servicing Agreement and deliver the letter of credit security to secure completion of the construction and installation of works and services required by the Lessor in respect of the Servicing Agreement;
- (d) the connection points for services to Parcel A will be to connection points to be specified by the Lessor;
- (e) for certainty, if the Lessee is in default under this Offer, the Lessee is not entitled to receive from the Lessor, and the Lessor is not obligated to pay the Lessee, any consideration under contract, unjust enrichment or otherwise for any improvements to Parcel A or to property of the Lessor constructed and paid for by the Lessee prior to the date of such default;

- (f) the form of the Lease has been approved by the Lessee, and the Lessee agrees to be bound by the same, including without limitation, the clauses that have been added to the Lease which require the Lessee under the Lease, to be bound by the Development Controls.

7.2 Survival of Representations and Acknowledgements. Unless otherwise specified herein, the representations and acknowledgements contained in Section 7.1 shall survive the Closing Date and shall continue in full force and effect for the benefit of the Lessor or the Lessee, as applicable.

8.0 **Condition of Parcel A**

8.1 Condition. The Lessee hereby acknowledges and agrees that, subject to the Lessor's representations and warranties contained in Section 2.1(d):

- (a) the Lessee is acquiring Parcel A on an "as is and where is" basis with no representations or warranties as to its condition, environmentally, geotechnical or otherwise, or its suitability for the Lessee's purposes, except as set out in this Offer or the Lease;
- (b) the Lessee hereby waives any requirement for the Lessor to provide the Lessee with a "site disclosure statement" under the *Environmental Management Act* (British Columbia);
- (c) the Lessee is acquiring Parcel A and entering into this Offer relying on its own inspections and not representations, warranties or covenants of the Lessor, except as set out in this Offer or the Lease;
- (d) there are no representations, warranties, guarantees, agreements or conditions, whether direct or collateral, or express or implied, which induced the Lessee to enter into this Offer or on which reliance is placed by the Lessee, or which affects the Offer or Parcel A, other than as specifically set out in this Offer or the Lease;
- (e) the Lessee is relying on its own due diligence in reviewing the Documents and that the Documents are not intended to constitute a representation or warranty as to any of the contents thereof on the part of the Lessor; and
- (f) the Lessor neither makes nor gives any representation, warranty or covenant with respect to the environmental condition of Parcel A including, without limitation, any representation, warranty or covenant as to whether or not Parcel A contains any waste, hazardous or toxic wastes or other environmentally sensitive or unwanted substances of any nature whatsoever.

8.2 As is Where Is. The Lessee covenants and agrees that the Lessor will have no liability whatsoever, and the Lessee must not make any claims against the Lessor in respect of, any contamination due to or the result of any Hazardous Materials being located on Parcel A or migrating to or from Parcel A, other than any liabilities which result from any breach by the Lessor of the Lessor's representations and warranties contained in Section 2.1(d). For the purposes of this Section 8.2, "Hazardous Materials" means any underground storage tanks, any explosive or radioactive materials, pollutants, contaminants, hazardous, corrosive or toxic substances, special

waste or waste of any kind, including, without limitation, compounds known as chlorobiphenyls, chlorophenols, petroleum and any other substance or material the storage, manufacture, disposal, treatment, generation, use, transportation, remediation or release into the environment of which is prohibited, controlled, regulated or licensed under environmental laws.

9.0 MISCELLANEOUS

9.1 Time. Time shall be of the essence of this Offer and the transactions contemplated herein.

9.2 Tender. Any tender of documents or money may be made upon the party being tendered or upon its solicitors and money may be tendered by cheque (in respect of the Deposit only), certified cheque, bank draft or wire transfer, to the trust account of the solicitors for the party being tendered upon, unless otherwise set out herein.

9.3 Relationship of the Parties. Nothing herein shall be construed to make the Lessee a partner, agent or joint venturer of the Lessor at any time, or the Lessee a freehold owner of Parcel A for any purpose.

9.4 Notice. Any notice or consent required or permitted to be given under this Offer will be in writing and will be given by delivery or email addressed to the recipient as follows:

- (a) To the Lessee at:
100 – 975 21st Street
West Vancouver, BC V7V 0B5

Attention: President, Kiwanis North Shore Housing Society
Email:

With a copy to:
Kuhn LLP
100-32160 South Fraser Way
Abbotsford, BC V2T 1W5

Attention: Jonathan Maryniuk
Email: jmaryniuk@kuhnco.net

- (b) To the Lessor at:

The Corporation of the District of West Vancouver
750 – 17th Street
West Vancouver, BC V7V 3T3

Attention: Mark Panneton, Corporate Officer
Email: corporateofficer@westvancouver.ca

With a copy to:

Lidstone & Company
1300 - 128 West Pender Street
Vancouver, BC V6B 1R8
Attention: Don Lidstone
Email: lidstone@lidstone.ca

or to such other address or email as may be designated by notice given by either party to the other. Any notice given will be conclusively deemed to have been given, in the case of delivery, on the day of actual delivery thereof and, in the case of email transmission, on the date transmitted if transmitted before 5:00 p.m. (Vancouver time) on a business day and otherwise on the next following business day.

9.5 Further Assurances. Each of the parties shall, at the cost and expense of the other, execute and deliver all such further documents and assurances and do such further acts and things as the other party may reasonably request from time to time to give full effect to this Offer.

9.6 Non-Assignment by Lessee. The Lessee may not assign its right under this Offer or to effect or allow a Change of Control without the prior written consent of the Lessor, such consent to be in the sole and absolute discretion of the Lessor.

9.7 Direction of Granting of Lease by Lessee. On the Closing Date, the Lessee shall not be entitled to direct the granting of the Lease without the prior written consent of the Lessor, such consent to be in the sole and absolute discretion of the Lessor.

9.8 Merger. Except as may be otherwise specifically set out elsewhere in this Offer and in this Section 9.8, the provisions of this Offer shall merge in the closing documents delivered on the Closing Date and thereafter only the provisions of the Lease executed by the Lessee, the documents executed pursuant to Section 3.1 and pursuant to Section 3.2(i) and the Permitted Encumbrances shall apply between the Lessor and the Lessee.

9.9 Commission. The Lessor warrants and represents to the Lessee that there is no real estate commission in connection with the Lease and hereby agrees to indemnify the Lessee in respect of any and all real estate commissions arising through the Lessor in connection with the transaction contemplated herein. The Lessee also warrants and represents to the Lessor that there is no real estate commission payable in connection with the Lease and hereby agrees to indemnify the Lessor in respect of all real estate commissions arising through the Lessee in connection with the transaction contemplated herein.

9.10 Binding Effect. This Offer shall enure to the benefit of and be binding upon the parties hereto, their respective successors and permitted assigns.

9.11 Extended Meanings. Words imparting the singular number include the plural and vice versa and words imparting the masculine gender include the feminine and neuter genders.

9.12 Headings. The headings are for convenience of reference only and shall not affect the construction or interpretation of this Offer.

9.13 Applicable Law. This Offer shall be interpreted and enforced in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.

9.14 Business Day.

- (a) In this Offer, “**business day**” means a day other than a Saturday, Sunday, Easter Monday, Boxing Day, National Day for Truth and Reconciliation or statutory holiday in British Columbia.


- (b) If the date for the performance of any act or thing falls on a day which is a not a business day, then the date for the performance of such act or thing will be extended to the next business day.

9.15 Entire Agreement. This Offer, including the Schedules hereto and other agreements incorporated by reference, constitutes the entire agreement between the parties with respect to the subject matter hereof and contains all representations and warranties, covenants and agreements of the respective parties, and may not be amended or modified except by an instrument in writing executed by both parties. This Offer supersedes all prior agreements, memoranda and negotiations between the parties with respect to the leasing of Parcel A.

9.16 Force Majeure. In the event of an excusable delay, the party being delayed will be entitled to extend the Closing Date from time to time for a period equal to the duration of the excusable delay, and the other party shall not be entitled to any compensation for any loss, injury, damage, or inconvenience whatsoever, including without limitation indirect or consequential loss, occasioned thereby, provided the party being delayed delivers notice in writing to the other party prior to the Closing Date detailing the date of the commencement and nature of the excusable delay (the “**Delay Notice**”) and provided further that the party being delayed uses its commercially reasonable efforts to render performance in a timely manner utilizing to such end commercially reasonable and available resources required in the circumstances. If the duration of an excusable delay results in the Closing Date being extended more than ninety (90) days from the original date for the Closing Date, the party receiving the Delay Notice may terminate this Offer forthwith, notwithstanding any other provision of this Offer, by giving written notice of termination to the other party, in which event the parties shall have no further obligations to one another and all deposits previously paid hereunder and remaining in trust in accordance with the terms of this Offer together with interest accrued thereon, shall be returned to the Lessee. As used herein “**excusable delay**” means the extent to which either the Lessor or the Lessee is unable to fulfill or is delayed or restricted in the performance or observance by such party of any obligation or act of such party hereunder which occurs as a consequence of or is attributable to strikes or labour or industrial disturbances (including lock-outs), civil disturbances, acts, orders, legislation, regulations, or directives of any governmental or other public authorities (including health authorities), acts of public enemies, war, riots, sabotage, blockades, embargoes, lightning, earthquakes, fire, storms, pandemics, epidemics, quarantines, health emergencies, hurricanes, floods, wash-outs, explosions or acts of God.

9.17 Schedules. The Schedules attached hereto form part of this Offer and are as follows:

Schedule A	District Lands
Schedule B	Lot Line Plan
Schedule C	Form of Lease
Schedule D	Permitted Encumbrances
Schedule E	Certificate as to GST Registered Status

9.18 Duration. This Offer shall be irrevocably open for acceptance up to 5:00 p.m. (Vancouver time) on  2022 and upon acceptance by the Lessor signing and delivering a copy hereof to the Lessee there shall be a binding agreement to lease Parcel A on the terms and conditions herein set forth. The Lessee understands that neither the preparation by the Lessor of this form of offer nor any negotiations entered into by the Lessor in connection with its submission shall constitute or imply any commitment by the Lessor unless this Offer has been accepted in writing by the Lessor in accordance with the terms hereof.

9.19 Delegation. A reference in this Offer to approval or consent of the Lessor shall be a reference to approval by the Lessor's Chief Administrative Officer or their designate. Nothing in this section precludes the Chief Administrative Officer for referring an approval or consent to the Lessor's Council.

9.20 Power Preserved. Except as expressly set out in this Offer, nothing contained or implied in this Agreement shall fetter in any way the discretion of the District of West Vancouver or the Council of the District of West Vancouver. Further, nothing contained or implied in this Offer shall derogate from the obligations of the Lessee under any other agreement with the District of West Vancouver or, if the District of West Vancouver so elects, prejudice or affect the District of West Vancouver's rights, powers duties or obligations in the exercise of its functions pursuant to the *Community Charter* or the *Local Government Act*, as amended or replaced from time to time, or act to fetter or otherwise affect the District of West Vancouver's discretion, and the rights, powers, duties and obligations of the District of West Vancouver under all public and private statutes, by-laws, order and regulations, which may be, if the District of West Vancouver so elects, as fully and effectively exercised in relation to the Project or Parcel A as if this Agreement had not been executed and delivered by the Lessee and the District of West Vancouver.

IN WITNESS WHEREOF the Lessee has executed this Offer as of the day and year first above written.

KIWANIS NORTH SHORE HOUSING)
SOCIETY by its duly authorized signatory:)
)
)
)
_____)
[Authorized Signatory])
)
_____)
[Authorized Signatory])

LESSOR'S ACCEPTANCE OF OFFER

For and in consideration of the covenants and agreements of the Lessee contained in this Offer, the Lessor hereby accepts this Offer and agrees to complete the Lease of Parcel A on the terms and conditions set out herein.

DATED this ____ day of _____, 2022.

THE CORPORATION OF THE DISTRICT)
OF WEST VANCOUVER)
by its duly authorized signatories:)
)
_____)
Authorized Signatory)
)
_____)
Authorized Signatory)

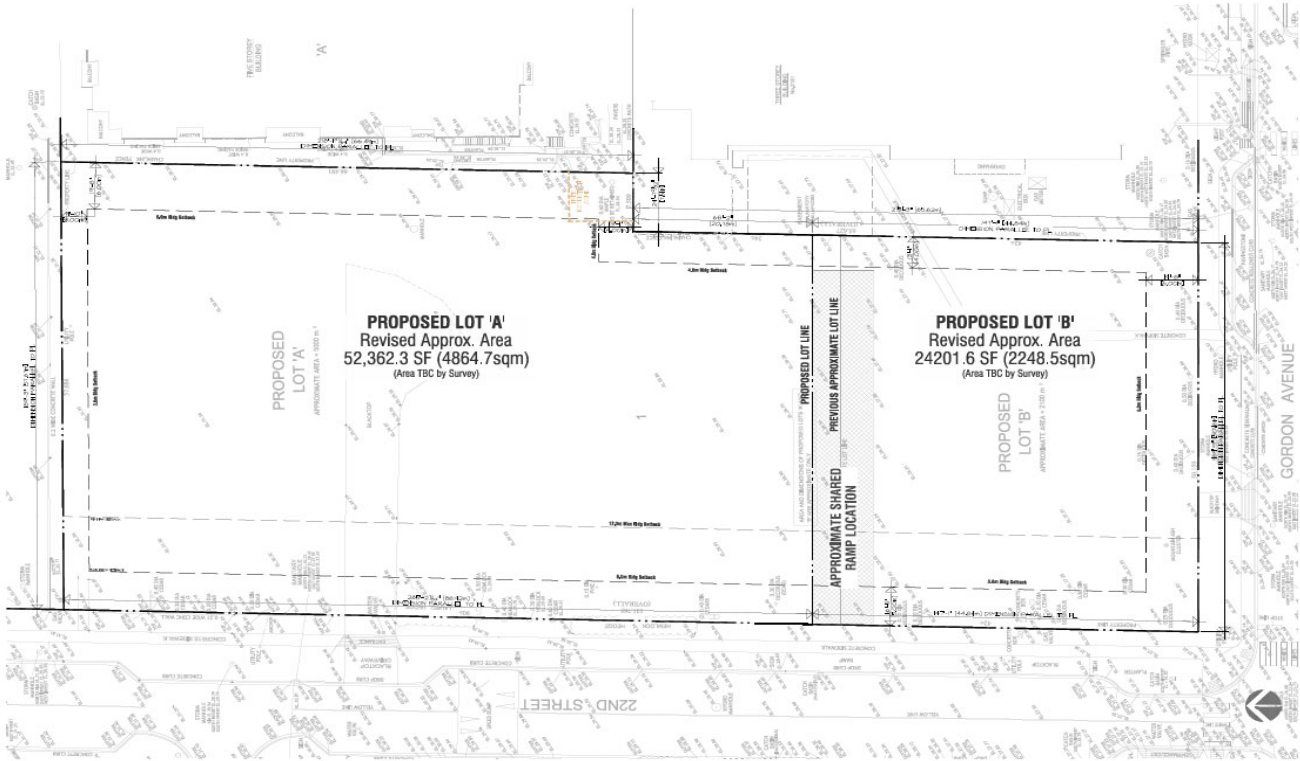
SCHEDULE A TO OFFER

LEGAL DESCRIPTION OF THE DISTRICT LANDS

CIVIC	PID	LEGAL	Defined Term in this Offer
2195 Gordon Avenue, West Vancouver, BC	024-158-259	LOT 1 DISTRICT LOT 775 GROUP 1 NEW WESTMINSTER DISTRICT PLAN LMP 38133	District Lands

SCHEDULE B TO OFFER

LOT LINE PLAN



Village West
Gordon Ave & 22nd Street
West Vancouver, BC



Parcel Plan

A-0.10

SCHEDULE C TO OFFER
FORM OF LEASE

SCHEDULE D TO OFFER

PERMITTED ENCUMBRANCES

1. The rights reserved to or vested in or deemed to be reserved or vested in any governmental authority pursuant to the Crown Grant applicable to Parcel A or to any applicable statutory provisions.
2. Applicable development/subdivision charges in favour of the District relating to the Project and/or Parcel A.
3. The following legal notations, liens, charges and encumbrances registered against Parcel A:
 - a. Legal Notations:

Nil.
 - b. Charges, Liens and Interests:
 - (i) Cross Access Agreement
 - (ii) No build covenant in favour of the District of West Vancouver, to be registered at the time of subdivision to create Parcel A and discharged by the District of West Vancouver at the time of issuance of building permit for the Buildings.

SCHEDULE E TO OFFER
GOODS AND SERVICES TAX CERTIFICATE

FORM 221(2)(b/c)

CERTIFICATE AS TO GST REGISTERED STATUS OF PURCHASER
(Paragraphs 221(2)(b) and (c))

FROM: KIWANIS NORTH SHORE HOUSING SOCIETY., or its permitted assignee
(the "Lessee")

TO: THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER
(the "Lessor")

RE: The lands situate at _____, West Vancouver, British Columbia
and more particularly known and described as:

(the "Property")

The Lessee hereby certifies to the Lessor pursuant to paragraphs 221(2)(b) and (c) of the
Excise Tax Act (the "Act") that the Lessee:

is registered for GST purposes, its registration number is _____ and
the Lessee will account for the GST payable in respect of the Lease of the Property in
accordance with the Act.

The Lessee acknowledges that the Lessor is relying on this Certificate in connection with the
Lease of the Property.

Each term that is used in the Certificate and that is defined in, and for the purposes of, Part IX of
the Act has the meaning assigned to it in Part IX of the Act.

DATED: _____.

Per: _____
Authorized Signatory

APPENDIX 2

TERMS OF INSTRUMENT – PART 2

GROUND LEASE

**GORDON AVENUE
(PARCEL A, PLAN ●)**

BETWEEN

THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER
750 17th Street
West Vancouver, BC V7V 3T3

AND:

KIWANIS NORTH SHORE HOUSING SOCIETY
100 – 975 21st Street, West Vancouver, BC, V7V 0B5

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Schedule A: Permitted Encumbrances

Schedule B: Mortgagee Agreement

**GORDON AVENUE PROJECT
WEST VANCOUVER, BRITISH COLUMBIA**

PARCEL A, PLAN ●

GROUND LEASE

THIS AGREEMENT (“this Lease”), made with effect as of the ● day of ●, 2022 (the “Effective Date”)

BETWEEN:

THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER
750 17th Street
West Vancouver, BC V7V 3T3

(“Lessor”)

AND:

KIWANIS NORTH SHORE HOUSING SOCIETY
100-975 21st Street
West Vancouver, BC V7V 0B5
(“Lessee”)

WITNESSES THAT WHEREAS:

- A. The Lessor is the owner of the Lands (hereinafter defined), together with all improvements existing on the Lands on the Effective Date; and
- B. The Lessor has agreed to lease to the Lessee the Lands for the Term (hereinafter defined) so that the Lessee may erect the Buildings (hereinafter defined) on the Lands, and use, occupy and enjoy the Lands and the Buildings erected on the Lands for the Term of this Lease, all subject to the terms and conditions contained in this Lease,

NOW THEREFORE THIS LEASE WITNESSES that in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Lessee to be paid, observed and performed, the Lessor and the Lessee hereby agree as follows:

**ARTICLE 1
INTERPRETATION**

1.1 For the purposes of this Lease

- (a) **“Additional Rent”** means the amounts, other than Basic Rent, which the Lessee shall pay under Sections 6.10, 6.12, and 7.3, together with any other additional amounts which shall be added under this Lease to and made part of Additional Rent;
- (b) **“Affiliate”** means any entity, which is at the time material to this Lease, Affiliated with the Lessee or with any entity Affiliated therewith (including any Affiliate permitted to hold

registered title to the interests of the Lessee under this Lease as trustee, agent or nominee for any such Affiliate);

- (c) **"Affiliated"** means (with respect to any entity material to the interests of the Lessee under this Lease) wholly owned, controlled, under substantive common control or ownership or otherwise affiliated as such term is defined in the *Business Corporations Act* (British Columbia), as if the Lessee were a corporation governed by that Act;
- (d) **"Applicable Laws"** means all provisions of law including, without limitation, municipal, regional, provincial and federal legislative enactments including, without limitation, all police, fire and sanitary regulations, standards of maintenance, zoning and building bylaws, and any municipal, regional, provincial, federal, other governmental regulations of the District, including, without limitation, the Land Use Requirements which relate to the construction of the Buildings, to the equipment and maintenance of the Buildings, to the operation, occupation and use of the Buildings or the Lands to the extent that the Lessee operates, occupies and uses the Buildings or the Lands whether by subletting the same or any part thereof or otherwise, and to the making of any repairs, replacements, alterations, additions, changes, substitutions or improvements of or to the Buildings the Lands or any part thereof;
- (e) **"Approving Officer"** means the municipal approving officer appointed by the District's Council under Section 77 of the *Land Title Act*, and the officer's deputy and any other individual appointed or designated by the District's Council to act in the place of the officer from time to time;
- (f) **"Architect"** means the architect the Lessee may appoint from time to time, who shall be a member in good standing of the Architectural Institute of British Columbia;
- (g) **"Basic Rent"** has the meaning ascribed hereto in Section 3.1 of this Lease;
- (h) **"Builders Lien Act"** means the *Builders Lien Act*, S.B.C. 1997, Ch. 45, as amended or replaced from time to time;
- (i) **"Building"** means a structure sheltering a use that is constructed on the Lands by the Lessee under this Lease, including without limitation, hard landscaping, together with all replacements, alterations, additions, changes, substitutions, improvements or repairs and other improvements from time to time constructed on or affixed or appurtenant to the Lands, and **"Buildings"** will have a corresponding meaning but pluralized;
- (j) **"Building Occupants"** means the persons who occupy a Building from time to time, whether such occupation is for residential or commercial purposes;
- (k) **"Building Permit"** means a building permit issued by the District to the Lessee pursuant to an application submitted by or on behalf of the Lessee, with respect to the construction of a Building on the Lands, as such permit may be amended, extended or replaced from time to time;
- (l) **"Business Day"** means any day which is not a Saturday, Sunday or a day observed as a holiday under the Applicable Laws in the province of British Columbia.

- (m) **“Certificate of Occupancy”** means a document issued by the District in its capacity as a governmental authority certifying compliance of any Building constructed on the Lands as part of the Project with applicable building codes and other laws, and indicating such Building or Buildings to be in a condition suitable for occupancy, but does not include any such document issued for any rental centre in connection with the Project;
- (n) **“Claims”** has the meaning ascribed thereto in Section 13.4;
- (o) **“Commencement Date”** means the earlier of:
 - a) the date of the District’s issuance of the first Certificate of Occupancy; or
 - b) the date which is 60 months following the Effective Date;
- (p) **“Commencement of Construction”** means:
 - a) the District has issued a Building Permit to the Lessee for a Building on the Lands, and
 - b) the Architect has certified that construction of the foundation and footings of the Buildings has been commenced by the Lessee;
- (q) **“Deposit”** has the meaning ascribed thereto in Section 3.1;
- (r) **“Development Permit”** means a development permit issued by the District to the Lessee pursuant to an application submitted to the District by or on behalf of the Lessee, with respect to the development of Buildings on the Lands, as such permit may be amended, extended or replaced from time to time;
- (s) **“Development Procedures Bylaw”** means Development Procedures Bylaw No. 4940, 2017, as amended or replaced on or after the Effective Date;
- (t) **“Dispute Notice”** has the meaning given to such term in Section 21.1(c);
- (u) **“District”** means:
 - a) the geographical area within the boundaries of the District of West Vancouver; or
 - b) The Corporation of the District of West Vancouver, acting in its capacity as a municipal government and not as the Lessor,as the context may require;
- (v) **“District’s Council”** means the council of The Corporation of the District of West Vancouver;
- (w) **“Effective Date”** shall have the meaning given to such term on page 1 hereof;
- (x) **“Environmental Contaminants”** means any contaminants, pollutants, hazardous, corrosive or toxic substances, flammable materials, explosive materials, radioactive

materials, dangerous goods, microwaves, waste, urea formaldehyde, asbestos, noxious substances, compounds known as chlorobiphenyls, special waste, and any other substance or material, in quantities or concentrations exceeding allowable limits prescribed by Environmental Laws, the storage, manufacture, disposal, treatment, generation, use, transport, remediation, or release of which into the environment is prohibited, regulated, controlled, or licensed under Environmental Laws;

- (y) **“Environmental Laws”** means any laws, statutes, regulations, orders, bylaws, permits or lawful requirements of any governmental authority with respect to environmental protection, or regulating, controlling, licensing, or prohibiting Environmental Contaminants;
- (z) **“Indemnified Parties”** means the Lessor, in its capacity as landlord and owner of the Lands, the District as a government, the members of the District’s Council, and the District’s officers, employees, volunteers, contractors, solicitors, agents, successors and assigns;
- (aa) **“Initial Notice”** has the meaning given to such term in Section 21.1(a);
- (bb) **“Land Use Requirements”** means a housing agreement, notice of which is filed on title to the Lands, a provision of a bylaw, permit, plan, policy, guideline, regulation, resolution, order or any other similar document enacted or passed by the Province of British Columbia or the District’s Council, including the Development Procedures Bylaw No. 4940, 2017, Official Community Plan Bylaw No. 4985, 2018, Zoning Bylaw No. 4662, 2010, and the Development Cost Charge Bylaw No. 3801, 1993, as amended or replaced from time to time before or after the date of this Lease, and every other applicable District bylaw, and all other lawful District, Approving Officer or provincial requirements governing land use and the construction, renovation, maintenance, repair and replacement of a Building on the Lands;
- (cc) **“Lands”** means those lands in the District of West Vancouver, in the Province of British Columbia, more particularly described in Part 1 of this General Instrument;
- (dd) **“Lessee’s Solicitors”** means Kuhn LLP or such other lawyer or firm of lawyers as the Lessee may, by delivery of written notice to the Lessor at any time and from time to time, appoint to act as legal counsel to the Lessee in connection with any matter arising under or in relation to this Lease;
- (ee) **“Lessor’s Solicitors”** means Lidstone & Company Law Corporation or such other lawyer or firm of lawyers as the Lessor may, by delivery of written notice to the Lessee at any time and from time to time, appoint to act as legal counsel to the Lessor in connection with any matter arising under or in relation to this Lease;
- (ff) **“LTO”** means the Land Title Office;
- (gg) **“Mortgage”** means a mortgage or mortgages upon or in respect of and specifically charging the leasehold interest of the Lessee in the Lands and a Building on the Lands and includes a debenture or deed of trust or mortgage to secure a bond or debenture, and any assignment of rents made to the Mortgagee as security;

- (hh) **"Mortgagee"** means a mortgagee under any Mortgage;
- (ii) **"Official Community Plan"** means the Official Community Plan Bylaw 2018 No 4985 as amended or replaced from time to time;
- (jj) **"Parcel A"** means *[Insert]*;
- (kk) **"Permitted Encumbrances"** means the charges and legal notations set out or described in Schedule A;
- (ll) **"Prime Rate"** means the annual percentage rate of interest established from time to time by the Royal Bank of Canada, Main Branch, Vancouver, British Columbia, or any successor bank, for loans to customers in Canada and designated by the Royal Bank of Canada as the prime rate, or any rate which may replace the prime rate in the future as a method for determining rates of interest to be charged;
- (mm) **"Project"** means the Lessee's proposed development on the Lands that consists of an approximately six (6) storey residential rental development project in two Buildings;
- (nn) **"Property Taxes"** means all taxes, rates, duties, charges and assessments due and owing during the Term, including school and regional district taxes and charges, local service area rates and other charges which now are or shall at any time during the Term be levied, rated, charged or assessed against the Lands, the Buildings, all other structures, all machinery, equipment, facilities and other property of any nature whatsoever thereon and therein, whether such taxes, rates, duties, charges and assessments are charged by any municipal, parliamentary, legislative, regional, school or other authority including the District during the Term;
- (oo) **"Release"** means any release, discharge, emission, deposit, issuance, spray, escape, spill, or leak and shall also have the respective corresponding meanings (if any) given under Environmental Laws;
- (pp) **"Rent"** means the Basic Rent, Additional Rent and any other amounts the Lessee must pay to the Lessor under this Lease;
- (qq) **"Substantial Completion"** and **"Substantially Completed"** in respect of a Building means:
 - a) the District has issued a Certificate of Occupancy therefor; or
 - b) the Architect or engineer of the Lessee has issued a certificate to the Lessor, signed and sealed by the Architect or engineer, certifying that:
 - (A) the Buildings and development servicing located solely on the Lands which is required pursuant to the servicing agreement between the Lessee and the District with respect to the Buildings are substantially complete in all material respects in a proper and workmanlike manner and in accordance with the applicable plans, specifications and supporting documents submitted to and accepted by the District upon which the issuance by the District of the Development Permit and any

Building Permits for any Buildings has been based, except for deficiencies, the correction of which, in the opinion of the Architect or engineer or deficiencies communicated in writing by the District to the Lessee is adequately ensured;

- (B) all applicable building and development servicing requirements and regulations of the District with respect to the Buildings (for greater certainty, not including any development servicing requirements and regulations for any servicing matters that are not located solely on the Lands) have been complied with by the Lessee except for deficiencies, the correction of which, in the opinion of the Architect or engineer or deficiencies communicated by the District to the Lessee is adequately ensured; and

- (C) the Buildings are ready for occupancy,

for the purposes other than Section 4.3(b), Substantial Completion may be determined in respect of portions of the Buildings;

- (rr) **“Substantial Destruction”** means any event of damage to or destruction of the Building (or of either of the buildings on Parcel A) which, in the opinion of the Architect, or an insurance adjustor or quantity surveyor qualified to practice in the Province of British Columbia and engaged by Lessee or by any Mortgagee or by any insurer of the Building, would require the repair or reconstruction of at least 50% of one of the Buildings;
- (ss) **“Surrender Notice”** means a written notice delivered by the Lessee (or by any Mortgagee on behalf of or upon the authority of the Lessee) to the Lessor, electing to surrender and terminate this Lease as contemplated in Section 8.3(j);
- (tt) **“Term”** means, collectively, the period commencing on the Effective Date and ending on the day before the Commencement Date plus the 60 year period commencing on the Commencement Date;
- (uu) **“Unavoidable Delay”** means any strike, lock-out or other labour dispute, material or labour shortage not within the control of the Lessee, stop work order issued by any court or tribunal of competent jurisdiction or other governmental order or embargo (provided that such order was not issued as the result of any act or fault of the Lessee or of any one employed by it directly or indirectly), fire or explosion, flood, wind, water, earthquake, snowfall, inclement weather affecting construction conditions, act of God, epidemics, pandemics or other similar circumstances beyond the reasonable control of the Lessee and not avoidable by the exercise of commercially reasonable effort or foresight by the Lessee;
- (vv) **“Zoning Bylaw”** means Zoning Bylaw No. 4662, 2010, as amended or replaced from time to time before or during the Term of this Lease, including as amended by the Zoning Bylaw Amendment.

1.2 In this Lease:

- (a) reference to the singular includes a reference to the plural, and vice versa, as the context requires;
- (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Lease;
- (c) reference to a particular numbered section or article, or to a particular lettered schedule, is a reference to the correspondingly numbered or lettered article, section or schedule of this Lease;
- (d) if a word or expression is defined in this Lease, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- (e) reference to any enactment includes any regulation, orders or directives made under the authority of that enactment;
- (f) reference to an enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced from time to time during the Term, unless otherwise expressly provided;
- (g) all provisions are to be interpreted as always speaking;
- (h) reference to a "party" is a reference to a party to this Lease and to its respective successors, permitted assigns, trustees, administrators and receivers;
- (i) reference to a "day", "month", "quarter" or "year" is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided; and
- (j) if the word "including" is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word "including".

1.3 Every provision of this Lease is a condition as well as covenant as though the words specifically expressing or importing a covenant or condition were used in each separate provision.

1.4 The following schedules are attached to and form part of this Lease:

Schedule A: Permitted Encumbrances

Schedule B: Mortgagee Agreement

1.5 Nothing contained or implied in this Lease will prejudice or affect the District's rights, powers or duties in the exercise of its functions as a municipal government under any applicable enactments.

ARTICLE 2

DEMISE AND POSSESSION OF THE LANDS

2.1 Demise and Possession

The Lessor leases to the Lessee, and the Lessee leases from the Lessor, the Lands for the Term, subject to the terms, conditions, covenants and other provisions of this Lease.

2.2 Vacant Possession

The Lessor covenants to deliver vacant possession of the Lands to the Lessee on the Effective Date.

ARTICLE 3

PAYMENT OF RENT AND TAXES

3.1 Basic Rent

The Lessee covenants and agrees to pay to the Lessor, on the Effective Date and as net basic rent, the sum of \$1.00 (the “**Basic Rent**”) of which a deposit in the amount of \$100,000 (the “**Deposit**”) has been paid by the Lessee to the Lessor’s Solicitors, in trust, prior to the Effective Date, and which Deposit shall be refunded on the execution and delivery of this Lease by the Lessor and Lessee.

3.2 Payments

Any payment of any monies by the Lessee to the Lessor required under this Lease must be:

- (a) paid to the Lessor in lawful currency of Canada;
- (b) applied toward amounts expressed to be outstanding under this Lease, in the manner stipulated by the Lessor; and
- (c) deemed to be Rent, in partial consideration for which this Lease has been entered into, and will be payable and recoverable as Rent, such that the Lessor will have all rights and remedies against the Lessee for default in making the payment which may not be expressly designated as Rent as the Lessor has for default in payment of Rent.

3.3 Authorization to Lessor’s Solicitors

The Lessor and Lessee hereby irrevocably authorize and direct the Lessor’s Solicitors to hold and pay the Deposit to the Lessor on the Effective Date as contemplated in Section 3.1, without further notice to, or the consent of, the parties hereto.

3.4 Net Lease

Unless otherwise expressly stipulated to the contrary in this Lease, all Rent required to be paid by the Lessee hereunder will be paid without any deduction, abatement or set-off whatsoever, it being the intention of the Lessor and Lessee that:

- (a) all expenses, costs, payments and disbursements incurred in respect of the Lands, any Buildings and any other improvements of the Lands or for any other matter or thing affecting the Lands, shall be borne by the Lessee;
- (b) the Basic Rent paid on the Effective Date will be absolutely net to the Lessor and free of all abatements, set-off or deduction or Property Taxes, charges, rates, assessments, expenses, costs, payments or out-goings of every nature arising from or related to the Lands, any Buildings or any other improvements on the Lands; and
- (c) the Lessee will pay or cause to be paid all Property Taxes, charges, rates, assessments, expenses, costs, payments and out-goings as provided in this Lease.

3.5 Interest on Amounts in Arrears

If any Rent payable to the Lessor is in arrears, such amount will bear interest, including interest on overdue interest, at the Prime Rate plus 6% per annum calculated monthly not in advance from the date due until paid, irrespective of whether or not the Lessor has demanded payment. The Lessor will have all the remedies for the collection of such interest, if unpaid after demand, as in the case of Rent in arrears, but this stipulation for interest will not prejudice or affect any other remedy of the Lessor under this Lease or under enactments, provided that this Section 3.5 will not apply to the Lessee's failure to pay Property Taxes under Sections 3.6 or 3.7 when due.

If a court declares or holds the Prime Rate to be void or unenforceable for any reason including uncertainty, then the rate of interest payable on amounts in arrears hereunder will be 18% per annum calculated monthly not in advance from the date due until paid.

3.6 Payment of Property Taxes if Lands are Taxable

Save as otherwise provided in Section 3.9, the Lessee will in each and every year during the Term not later than the day immediately preceding the date or dates on which Property Taxes imposed upon real property within the District of West Vancouver become due and payable, whether monthly, quarterly, twice-yearly or otherwise, pay and discharge or cause to be paid and discharged all applicable Property Taxes, and will indemnify and keep indemnified the Lessor from and against payment of all losses, costs, charges and expenses occasioned by or arising from any and all such Property Taxes suffered by the Lessor that may be collected by the Lessor as Additional Rent with all rights of distress and otherwise as reserved to the Lessor in respect of rent in arrears.

The Lessee further covenants and agrees that during the Term, it will deliver to the Lessor for inspection receipts for payments of all Property Taxes which were due and payable during the Term within 14 days following receipt by the Lessee of each of such receipts for payment. The Lessor will, not later than 14 days following receipt of any assessment notices delivered to the Lessor by any taxing authority, relating to the Lands, the Buildings or any other structures, any machinery, equipment, facilities and other property of any nature, forward a copy to the Lessee. The Lessee will have the right from time to time to appeal any assessment of the Lands or the Buildings or any Property Taxes referred to in this Section 3.6 if the appeal is at the sole cost of the Lessee.

For greater certainty, the Lessee will be responsible for the payment of Property Taxes as referred to in this Section 3.6 from the Effective Date.

3.7 Payment of Equivalent to Property Taxes if Lands are Exempt from Tax

The Lessee covenants and agrees with the Lessor that if during the Term, the Lands, the Buildings, all other structures, all machinery, equipment and facilities and other property of any nature, are by the provisions of any municipal, parliamentary, legislative enactment exempt from Property Taxes in whole or in part by reason of the Lessor's ownership of the Lands and they would otherwise have been subject to Property Taxes, unless the District of West Vancouver as a local government grants the Lessee a permissive tax exemption, then the Lessee will in each and every year during the Term that such exemption occurs pay to the Lessor as Additional Rent in like manner and time as Property Taxes are to be paid under Section 3.6, an amount equal to the amount that but for such exemption would have been paid by the Lessee under Section 3.6 for Property Taxes.

For this purpose in each year during the Term the following provisions apply:

- (a) If the District enacts a rates bylaw or preparation of the real property tax roll for the current year providing for the payment of Property Taxes imposed or to be imposed upon real property within the District, the Lessor shall deliver to the Lessee an advance tax statement or statements of the amount or amounts determined in accordance with the bylaw from time to time in respect of the Lands, the Buildings and all other structures, all machinery and equipment and facilities and other property; and
- (b) after the passing of a rates bylaw by the District establishing the rate to be levied on real property with the District for the current year, the Lessor will determine the Additional Rent by applying the rates established by the rates bylaw to all, or such portion of the assessed value of the Lands, the Buildings and all other structures, all machinery, equipment, and facilities and other property as the Property Tax rates are applied to other taxpayers in the District in like case, and the Lessor will deliver to the Lessee a statement of the amount payable under this Section 3.7 after deducting all Property Taxes paid in advance for the current year.

The Lessee will have the right from time to time to appeal any assessment of the Lands or Buildings or any equivalent to Property Tax as referred to in this Section 3.7, if the appeal will be at the sole cost of the Lessee.

3.8 District Fees and Charges

Nothing in this Lease relieves the Lessee from the obligation to pay the District any applicable fees, charges, levies and other payments required under any District bylaws or provincial statute or regulation in respect of the Lands and any Buildings or other improvements on the Lands.

3.9 Delinquent Taxes

If the Lessee in any year during the Term fails to pay Property Taxes, fees or other payments under any of Sections 3.6 through 3.10 when due, the Lessee will only be obligated to pay the interest and penalties as would be payable by other taxpayers in the District.

3.10 Penalties Levied under District Bylaws

The Lessee covenants with the Lessor to pay for or cause to be paid when due any fine validly imposed by the District for acts or things done in contravention of, or in violation of, any provision of any District

bylaws or agreements registered in the LTO in respect of the Lands and any Buildings or other improvements on the Lands.

ARTICLE 4 CONSTRUCTION

4.1 Lessee to Construct Buildings

After the District has issued the Development Permit, the Lessee will as soon as is reasonably practicable apply to the District for a Building Permit (to the extent not already obtained or applied for with respect to the Building or Buildings to be constructed on the Lands), which application must comply with the Land Use Requirements. Upon receipt of a Building Permit from the District, the Lessee shall construct the Building, together with other facilities ancillary thereto and connected therewith on the Lands expeditiously and in good workmanlike manner in substantial accordance with the drawings, elevations, specifications (including, without limitation, the materials to be used), location on the Lands and exterior decoration and design all upon which the issuance of the Development Permit and the Building Permit by the District are based, and in compliance with the requirements of any applicable Development Permit and Building Permit.

4.2 Fire and Liability Insurance during Construction of Buildings

- (a) The Lessee must effect or must cause its contractor or contractors to effect prior to the Commencement of Construction of the Buildings, or any of them, and must maintain and keep in force until the insurance required under Article 6 has been effected, insurance:
 - a) protecting both of the Lessee and the Lessor and the Lessor's officers and employees (without any rights of cross claim or subrogation against the Lessor) against claims for personal injury, death or property damage or other third party or public liability claims arising from any accident or occurrence upon, in or about the Lands and from any cause, including, without limitation, the risks occasioned by the construction of the Buildings, and to an amount being not less than Ten Million Dollars (\$10,000,000.00) per occurrence, for any personal injury, death, property or other claims in respect of any one accident or occurrence; and
 - b) protecting the Lessee from loss or damage (without any rights of cross-claim or subrogation against the Lessor) to the Buildings and all fixtures, equipment, improvements and building materials on the Lands from time to time both during and after construction (but which may be by policies effected from time to time covering the risk during different phases of construction of the Buildings) against fire, earthquake and all other perils from time to time customarily included in the usual all risks builders' risk form of policy applicable to similar properties during the construction and effected in the Province of British Columbia by prudent owners, and such other perils as the Lessor may reasonably require to be insured against to the full insurable value thereof at all times and in any event in the amount sufficient to prevent the Lessor or the Lessee being deemed co-insurer.
- (b) The proceeds of insurance which may become payable under any policy of insurance effected under this Section 4.2 will be payable to the Mortgagee if so required by any

Mortgagee, or to the Lessee if there is no Mortgagee and will be available to the Lessee to finance any required repair and reconstruction.

- (c) Sections 6.3, 6.4, 6.5, 6.8, 6.10, 6.11 and 6.12 respecting insurance will apply to the insurance during construction of the Buildings required by this Section 4.2.

4.3 Deadlines for Commencement of Construction and Substantial Completion of Buildings

The Lessee covenants and agrees with the Lessor that, subject always to Section 10.1 and Section 17.2:

- (a) Commencement of Construction shall take place on or before the day which is 12 months after the Effective Date; and
- (b) the Buildings and any District works, services and facilities required under the Development Permit or Building Permit shall be Substantially Completed as certified by the Architect on or before the day which is the fifth (5th) anniversary of the Effective Date.

4.4 Termination Where Lessee Defaults in Commencement of Construction or Substantial Completion

- (a) Subject to Section 4.4(b) and Section 10.1, if Commencement of Construction or Substantial Completion of the Buildings does not occur by the dates set forth in Section 4.3, the Lessor shall have the right and option to terminate this Lease and the provisions of Section 19.1 shall apply save only as modified by Section 4.4(c).
- (b) The Lessor will not be entitled to terminate this Lease in respect of a delay in the Commencement of Construction, if the Lessee has applied for and is actively and in good faith pursuing issuance of an excavation permit or a Building Permit with respect to the Buildings to be constructed on the Lands or, in respect of a delay of Substantial Completion, has applied for and is actively and in good faith pursuing issuance of a Certificate of Occupancy with respect to the Buildings on the Lands.
- (c) In the event of a dispute between the Lessor and the Lessee as to whether or not the Lessor is entitled to terminate this Lease pursuant to the provisions of this Section 4.4 the Lessor and the Lessee agree the provisions of Article 21 shall apply to such dispute.
- (d) If the Lessor terminates this Lease under section 4.4 then the Lessor in its sole discretion may by prior notice in writing require the Lessee at their sole expense to demolish and remove the Buildings and all other improvements from the Lands and to deliver to the Lessor vacant possession of the Lands in a clean, level and safe condition.

ARTICLE 5

PERMITTED USES OF BUILDINGS

5.1 Permitted Uses of Buildings

The Lessee covenants and agrees with the Lessor that neither the Lands nor the Buildings nor any part of the Lands or the Buildings may be used for any purposes except as permitted under the Zoning Bylaw in effect as of the Effective Date, or as otherwise permitted under Applicable Laws, including any Land Use

Requirements, and as specified under Section 16.1(d). For certainty, the Land Use Requirements include a housing agreement. The Lessee will be solely responsible for ensuring that its use of the Lands and the Buildings comply with the Zoning Bylaw.

- 5.2 The Lessee may contract with a rental housing operator to operate the rental housing in the Buildings and Parcel A, only with the prior written consent of the Lessor, which consent may be withheld absolutely by the Lessor and provided that the operator complies with the Land Use Requirements. The Lessee may contract with any other person to maintain and repair the Buildings and Parcel A without the prior written consent of the Lessor.
- 5.3 Kiwanis must at its sole cost design, build and construct the Buildings, including specifically a fully operational rental housing facility and an Adult Day Centre strictly in accordance with the terms and conditions of the:
- (a) Housing Agreement,
 - (b) Offer to Lease entered between the Parties the ___ day of ____, 2022, and
 - (c) Section 4.1 of this Lease,

and without limitation must operate the rental housing strictly in accordance with the Housing Agreement throughout the Term. For certainty, the Lessor will not issue a Certificate of Occupancy for the Buildings until the Adult Day Centre is Substantially Completed.

ARTICLE 6 INSURANCE

6.1 Insurance

At all times during the Term immediately following the Substantial Completion of construction of the Buildings, the Lessee will, at no expense to the Lessor, insure and keep insured or cause to be insured the Buildings with one or more companies licenced to do business in the Province of British Columbia for loss or damage on an "all risk" basis, including, by fire and other perils now or hereafter from time to time embraced by or defined in the commercial building form of insurance coverage applicable to similar properties as the Lands and the Buildings and effected in the Province of British Columbia by prudent owners from time to time during the Term including, without restricting the generality of the foregoing, the hazard of lightning, earthquake, explosion, wind storm, cyclone, tornado, hail, flood, sea level rise, riot, civil commotion, malicious damage, aircraft, smoke and vehicle damage to the extent that insurance against such risk or perils, or any of them, may be obtained on a commercially-reasonable basis in an amount equal to the full replacement value thereof.

6.2 Other Insurance

- (a) At all times during the Term, if the Buildings contain any boilers or pressure vessels, the Lessee must, at no expense to the Lessor, maintain or cause to be maintained in respect of the Buildings pressure vessel insurance with one or more companies entitled to do insurance business in the Province of British Columbia protecting the Lessor and the Lessee during the Term in respect of any boilers and such other pressure vessels located and operated on the Lands, such insurance will cover loss or damage caused by rupture of steam pipes.

- (b) At all times during the Term immediately following the Substantial Completion of construction of the Buildings, the Lessee must, at no expense to the Lessor, maintain or cause to be maintained in respect of the Buildings rental interruption insurance for at least 24 months with respect to such residential rental use.

6.3 Deductible Amounts

Any of the policies of insurance referred in Sections 4.2 or 6.1 may, with the approval of the Lessor, which approval will not be unreasonably withheld, provide that the amount payable in the event of any loss will be reduced by a deductible amount, such amount to be designated by the Lessee and approved by the Lessor, such approval not to be unreasonably withheld, and the Lessee will be a co-insurer to the extent of the amount so deducted from the insurance monies paid in the event of any loss, and the said amount will for the purpose of Section 6.7 hereof, be included as part of the insurance monies payable and paid.

6.4 Co-Insurance Clauses

If any of the policies of insurance referred to in Sections 4.2 or 6.1 will contain any co-insurance clauses, the Lessee will maintain at all times a sufficient amount of insurance to meet the requirements of such co-insurance clause so as to prevent the Lessor or the Lessee from becoming a co-insurer under the terms of such policy or policies and to permit full recovery by the Lessee in the event of an insured loss.

6.5 Identity of Insured and Subrogation

Any and all policies of insurance referred to in Sections 4.2 and 6.1 will:

- (a) be written in the name of the Lessee as the insured in connection with any liability insurance, with proceeds of any insurance for property losses to be payable to the Lessee or to the Mortgagee, if any, as their respective interests may appear, and with the Lessor and the Mortgagee named as additional insureds in connection with any liability insurance, as their interests may appear;
- (b) contain a waiver of subrogation clause to the effect that any release from liability entered into by the Lessee prior to any loss will not affect any right of the Lessee, the Mortgagee or the Lessor, as applicable, to recover; and
- (c) contain a provision or will bear an endorsement that the insurer will not cancel such policy without first giving the Lessee at least 30 days' notice in writing of its intention to cancel (and the Lessee expressly agrees to provide written notice to the Lessor of any notice of intention by any insurer to cancel any such policy within five days of receiving any such notice from its insurer).

6.6 Release of the Indemnified Parties from Liability for Insured Loss or Damage

The Lessee hereby releases the Indemnified Parties from any and all liability or loss of damage caused by any of the perils against which the Lessee will have insured, or under the terms of this Lease is obligated to insure, and the Lessee hereby covenants to defend, indemnify and save harmless the Indemnified Parties from and against all manner of actions, causes of action, suits, judgments, damages, loss, costs, expenses (including, without limitation, legal expenses on a solicitor and own client basis), claims and demands of any nature whatsoever relating to such insured loss or damage.

6.7 Payment of Loss under Insurance Policy Referred to in Section 6.1

- (a) The proceeds of insurance payable under any or all of the policies of insurance referred to in Sections 6.1 and 6.12 hereof will be paid to the order of the Mortgagee, or to the order of the Lessee if there is no Mortgagee.
- (b) Subject to Article 8, the Lessor and Lessee agree that the Mortgagee or Lessee (as the case may be) will use such proceeds of insurance for the restoration, reconstruction or replacement of the loss or damage in respect of which such insurance proceeds shall be used to restore such damage in accordance with the damage assessed by the insurer and in accordance with the Architect engaged by the Lessee or such other person as the Lessor and Lessee may agree upon who is in charge of such restoration, reconstruction or replacement.

6.8 Workers' Compensation Coverage

At all times during the Term, the Lessee must at its own expense procure and carry or cause to be procured and carried and paid for full workers compensation coverage in respect of all workmen, employees, servants and others engaged in or upon any work on the Lands, the non-payment of which would create a lien on the Lands.

The Lessee must immediately notify the Lessor of any dispute involving third parties which may arise in connection with obtaining and maintaining workers compensation coverage required hereby if such dispute results in the requisite coverage not being in place and the Lessee must take all reasonable steps to ensure the resolution of any such dispute forthwith. At all times during the Term, the Lessee must defend, indemnify and save harmless the Indemnified Parties from and against all damages, costs, expenses (including, without limitation, legal expenses on a solicitor and own client basis), claims, suits, judgments and demands which the Indemnified Parties may incur or suffer as a result of any default by the Lessee of its obligation under this Section 6.8 to ensure the said full workers compensation coverage is maintained. The Lessee must further ensure that no amount of the said workers compensation coverage is left unpaid so as to create a lien on the Lands. If the workers compensation coverage required by this Section 6.8 is not in place within 60 days following the date of the notice to the Lessor hereinbefore mentioned, the Lessor will be entitled to have recourse to the remedies of the Lessor specified in this Lease or at law or equity.

6.9 Comprehensive General Liability Insurance

At all times during the Term, the Lessee must, at the expense of the Lessee, maintain with one or more companies licenced to do business within the Province of British Columbia (and acceptable to the Lessor, acting reasonably) comprehensive general liability insurance against claims for personal injury death or property damage or loss arising out of the Lessee's use and occupation of the Lands and Buildings, indemnifying and protecting:

- (a) specific Indemnified Parties identified by the Lessor, to limits approved by the Lessor from time to time, in each case acting in a commercially reasonable manner; and
- (b) the Lessee and its directors, officers, employees, agents, successor and assigns.

6.10 Payment of Insurance Premiums

The Lessee must pay or cause to be paid all the premiums under the policies of insurance referred to in this Article 6 as they become due and payable and, in default of payment by the Lessee, the Lessor may pay the same and add the amount so paid to the Additional Rent with all right of distress otherwise as reserved to the Lessor in respect of Additional Rent as rent in arrears.

6.11 Copies of Insurance Policies

If requested by the Lessor, and on an annual basis without request, the Lessee must forthwith from time to time deliver or cause to be delivered to the Lessor Certificates of Insurance confirming the renewal of all policies of insurance each year during the Term referred to in this Article 6 and obtained and maintained by the Lessee hereunder, and at the request of the Lessor, a letter from the Lessee's broker, confirming to the Lessor that the premiums thereon have been or will be paid.

6.12 Insurance May be Maintained by Lessor

Subject to Article 8, the Lessee agrees that should the Lessee at any time during the Term fail to insure or keep insured the Buildings against loss or damage by fire and other perils as required under Section 6.1, or fail to maintain insurance against claims for personal injury, death or property damage or loss as required under Section 6.9, then in any of such events, the Lessor, although not obliged to do so, may obtain and maintain such insurance in such amount or amounts with such deductible amounts and for such period or periods of time as the Lessor deems advisable; and the Lessee must pay to the Lessor as Additional Rent (upon the Lessor obtaining any of such insurance and thereafter annually during the Term within 30 days after receipt of any invoice from the Lessor) all of these amounts, at the rates charged by the insurance companies with whom the Lessor has placed such insurance. In the event the Lessor pays for or obtains and maintains any insurance under this Section 6.12, the Lessor must submit to the Lessee annually a statement of the amount or amounts payable by the Lessee under this Section 6.12 as the cost of such insurance for the next ensuring year and upon receipt of payment therefor will apply the same on account of the premiums of such insurance with the loss, if any, thereunder payable to the Lessee and any Mortgagee as their interests may appear.

ARTICLE 7 REPAIRS AND MAINTENANCE

7.1 Lessor not Obligated to Repair

The Lessor will not be obliged to furnish any services or facilities or to make repairs or alterations in or to the Lands or the Buildings, the Lessee hereby assuming the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Lands and the Buildings.

7.2 Repair by the Lessee

The Lessee at the Lessee's cost and expense must during the Term, put and keep in good order and condition or must cause to be put and keep in good order and condition (reasonable wear and tear excepted so long as the reasonable wear and tear does not unreasonably affect the exterior appearance of the Buildings or the integrity of any foundation or structure of the Buildings) the Lands and the Buildings, and the appurtenances and equipment thereof, both inside and outside, including, but not limited to fixtures, walls, foundations, roofs, vaults, elevators, if any, and similar devices, heating and air

conditioning equipment, sidewalks, landscaping, yards and other like areas, water and sewer mains and connections, water, steam, gas, and electric pipes and conduits, and all other fixtures on the Lands and the Buildings and machinery and equipment used or required in the operation thereof, whether or not enumerated herein, and must, in the same manner and to the same extent as a prudent owner, make any and all necessary repairs, replacements, alterations, additions, changes, substitutions and improvements, ordinary or extraordinary, foreseen or unforeseen, structural or otherwise, and keep the Buildings and aforesaid fixtures, appurtenances and equipment fully usable for all the purposes for which the Buildings were erected and constructed and the aforesaid fixtures, appurtenances and equipment were supplied and installed. Such repairs will be in all respects to the standard at least substantially equal in quality of material and workmanship to the original work and material in the Buildings and aforesaid fixtures, appurtenances and equipment.

The Lessee must not commit or suffer waste or injury to the Lands or the Buildings or any part thereof (reasonable wear and tear excepted so long as the reasonable wear and tear does not unreasonably affect the exterior appearance of the Buildings or the integrity of any foundation or structure of the Buildings) and must not use or occupy or permit to be used or occupied the Lands or the Buildings or any part thereof for any illegal or unlawful purpose or in any manner which will result in the cancellation of any insurance, or in the refusal of any insurers generally to issue any insurance as requested. The Lessee must not injure or disfigure the Lands or the Buildings or permit the same to be injured or disfigured in any way; and at the expiration or other termination of this Lease, the Lessee must, except as otherwise expressly provided herein, surrender and deliver up the Lands with the Buildings, and the aforesaid fixtures, appurtenances and equipment thereof, or any replacements thereof or substitution therefor, in good order and condition (reasonable wear and tear excepted so long as the reasonable wear and tear does not unreasonably affect the exterior appearance of the Buildings or the integrity of any foundation or structure of the Buildings).

For greater certainty, the Lessor acknowledges that the Lessee shall not be obligated to repair or replace any Buildings or related fixtures or equipment after the expiry of the Term (or earlier termination in accordance with Section 8.3) to a standard which will allow the Buildings to continue to be occupied and operated for residential purposes. The Lessee acknowledges that the foregoing acknowledgement by the Lessor is subject to and in no way diminishes the Lessee's obligations to repair and maintain the Lands and the Buildings, and the appurtenances and equipment thereof, during the continuation of the Term in accordance with this Section 7.2.

7.3 Repairs to Buildings by Lessor

Subject to Article 8, the Lessee covenants and agrees with the Lessor that if the Lessee does not put and keep in good order and condition or cause to put and keep in good order and condition (reasonable wear and tear excepted so long as the reasonable wear and tear does not unreasonably affect the exterior appearance of the Buildings or the integrity of the foundation or structure of the Buildings) the Lands and the Buildings and the fixtures, appurtenances and equipment thereof, both inside and outside, all as more particularly required by the provisions of Section 7.2, the Lessor through its agents, servants, contractors and subcontractors, although not obliged to do so, may (subject to the observance by the Lessor of the Lessee's reasonable requirements regarding Building and Building Occupants' security and privacy) enter upon those parts of the Lands and the Buildings required for the purpose of making the necessary repairs required to put the Lands, Buildings, fixtures, appurtenances and equipment in good order and condition (reasonable wear and tear excepted so long as the reasonable wear and tear does not unreasonably affect the exterior appearance of the Buildings or the integrity of the foundation or structure of the Buildings); provided that the Lessor will make such repairs, only after giving the Lessee 60 days' written

notice of its intention so to do, except in the case of an emergency, and will comply with the Lessee's reasonable requirements regarding Building and Building Occupants' security and privacy. Any amount paid by the Lessor in making such repairs to the Lands and the Buildings or any part or parts thereof, together with all costs and expenses of the Lessor must be reimbursed to the Lessor by the Lessee on demand together with:

- (a) interest at the rate of 6% per annum above the Prime Rate from the date incurred until paid; and
- (b) an administrative charge in an amount of fifteen percent (15%) of such amount paid,

and may be recovered by the Lessor as Additional Rent.

ARTICLE 8

DAMAGE OR DESTRUCTION

8.1 Rent not to Abate

The partial destruction or damage or complete destruction by fire or other casualty of the Buildings will not terminate this Lease or (subject to Section 8.3) entitle the Lessee to surrender possession of the Lands or the Buildings or to demand any abatement or reduction of any monies payable by the Lessee under this Lease, any law or statute now or in the future to the contrary notwithstanding.

8.2 Lessee's Obligations When the Buildings Are Damaged or Partially Destroyed

Subject to Section 8.3, the Lessee covenants and agrees with the Lessor that in the event of damage to or partial destruction of the Building or Buildings (excluding Substantial Destruction) and subject to compliance with Applicable Laws, the Lessee must either:

- (a) reconstruct or replace any part of the Buildings destroyed with a new structure in accordance with any agreement which may be made by the Lessee with the Lessor; or
- (b) repair or replace such damage or destruction in accordance with the Building Permit, in the absence of any such agreement.

8.3 Lessee's Obligations When the Buildings Are Completely or Substantially Destroyed

If Substantial Destruction of one or both of the Buildings occurs then the Lessee (or any Mortgagee) must either:

- (a) reconstruct or replace any part of the Buildings destroyed in accordance with:
 - (i) any agreement made by the Lessor with the Lessee, or
 - (ii) the Building Permit, in the absence of such an agreement; or
- (b) elect to terminate and surrender this Lease, by delivery to the Lessor of a Surrender Notice at any time prior to 180 days following the date of such Substantial Destruction, in

which event, following the delivery of a Surrender Notice, the following provisions shall apply:

- (i) the Lessee will not be obligated to repair or reconstruct any damage to or destruction of any Building, provided that if the Lessee elects to repair or reconstruct then Section 8.2(a) and Section 8.2(b) shall apply, *mutatis mutandis*;
- (ii) the Lessee will be responsible to promptly apply to the District for such permits as may be required to demolish the damaged or destroyed Building, or both Buildings if the Lessor decides in its sole and absolute discretion (and the Lessor, strictly in its capacity as owner of the Lands, will cooperate with the Lessee's reasonable requests in connection therewith);
- (iii) the Lessee will (upon receipt of all requisite permits) be responsible, at the Lessee's sole expense, to demolish and to remove the Building or Buildings if the Lessor decides pursuant to section 8.3(b), and all other improvements from the Lands and to deliver to the Lessor vacant possession of the Lands in a clean, level and safe condition;
- (iv) effective as of the date of delivery to the Lessor of vacant possession of the Lands as required above, the Lessee (and any Mortgagee) will execute and deliver to the Lessor all documentation as may be required to surrender and discharge this Lease (and any Mortgage) from registered title to the Lands; and
- (v) subject to payment by the Lessee of all costs involved in the demolition and removal of the Building or Buildings from the Lands and delivery of the Lands in a clean, level and safe condition, the Lessee (or Mortgagee, as applicable) shall be entitled to receive and retain any proceeds of insurance available to the Lessee in connection with any event of Substantial Destruction.

8.4 Replacement, Repair or Reconstruction

Any replacement, repair or reconstruction of the Building or Buildings or any part thereof under the provisions of Sections 8.2 or 8.3 hereof must be made or done in compliance with the provisions of Sections 7.2 and 9.1 hereof and in any event the Lessee shall not be entitled to recover, or claim recovery of, any portion of Rent from the Lessor.

ARTICLE 9

REPLACEMENTS, ALTERATIONS AND ADDITIONS

9.1 Replacements, Alterations and Additions

If the Lessee makes or permits to be made any changes, alterations, replacements, substitutions or additions affecting the structure of the Buildings, the major electrical or mechanical systems contained

therein, or the exterior design or appearance of the Buildings or the Lands, all such changes, alterations, replacements, substitutions or additions:

- (a) must comply with the Land Use Requirements and this Lease; and
- (b) subject to Article 10, once begun, will be prosecuted with reasonable due diligence to completion.

ARTICLE 10

UNAVOIDABLE DELAYS

10.1 Unavoidable Delay

If, by reason of the occurrence of any event of Unavoidable Delay, the Lessee is, in good faith and without default or neglect on its part, prevented or delayed in the Commencement of Construction, in the Substantial Completion or in any repair of the Buildings or any part or parts of them which under the terms of this Lease the Lessee is required to do by a specified date or within a specified time or if not specified within a reasonable time, the date or period of time within which the work was to have been completed will be extended by the Lessor by a reasonable period of time at least equal to that of such delay or prevention caused by such event of Unavoidable Delay and the Lessee will not be deemed to be in default if it performs and completes the work in the manner required by the terms of this Lease within such extended period of time or within such further extended period of time as may be agreed upon from time to time between the Lessor and the Lessee, provided that the Lessee delivers notice in writing to the Lessor detailing the date of the commencement and nature of the Unavoidable Delay (the “**Delay Notice**”) by no later than fourteen (14) days after the commencement of the Unavoidable Delay. If the Lessor and the Lessee cannot agree as to whether or not there is an event of Unavoidable Delay within the meaning of this Section 10.1 or if they cannot agree as to the length of such Unavoidable Delay, then such matter will be determined in accordance with Article 21. The Lessee must act diligently and take all commercially reasonable steps of a prudent owner to remove the cause or causes of any Unavoidable Delay in the Commencement of Construction and Substantial Completion. Within 48 hours of the time the Unavoidable Delay is remedied or discontinued, the Lessee must give notice in writing to the Lessor of such remedy or discontinuance, and that the Lessee has resumed, or is then able to resume, the performance of its suspended covenants and obligations hereunder.

ARTICLE 11

BUILDERS LIENS

11.1 Release of Liens

The Lessee must, throughout the Term at its own cost and expense, cause any and all builders liens and other liens for labour, services and materials alleged to have been furnished with respect to the Lands of the Buildings, which may be registered against or otherwise affect the Lands or the Buildings, to be paid, satisfied, released (including, without limitation, the release of all such liens from the interest of the Lessor in the Lands), or vacated within 42 days after the earlier of the Lessee becoming aware of any such lien and the date when the Lessor delivers to the Lessee and the Mortgagee written notice of any claim for any such lien PROVIDED HOWEVER, that in the event of a *bona fide* dispute by the Lessee of the validity or correctness of any claim for any such lien, the Lessee will not be bound by the foregoing, but will be entitled to defend against the same in any proceedings brought in respect thereof after first paying

into court the amount claimed or sufficient security therefor, and such costs as the court may direct or the Lessee may provide, as security in respect of such claim: and, upon being entitled to do so, the Lessee must register all such documents as may be necessary to cancel such lien from the Lands and the Buildings, including, without limitation, the Lessor's interest therein.

11.2 Lessor Has Filed Notice of Interest

It is agreed that the Lessor will not be responsible for claims of builder's liens filed by persons claiming through the Lessee or persons for whom the Lessee is in law responsible. The Lessee acknowledges and agrees that the improvements to be made to the Lands will be made at the Lessee's request solely for the benefit of the Lessee and those for whom the Lessee is in law responsible. The Lessor has filed a notice of interest in the LTO under Section 3(2) of the *Builders Lien Act* stating that the Lessor is giving notice that it will not be responsible for any improvements done to the Lands and Buildings or other Improvements done to the Lands and that the Lessor is filing notice that it will not be responsible for any improvements done to the Lands and Buildings or other improvements thereon, unless the improvements are undertaken at the express request of the Lessor.

ARTICLE 12 INSPECTION AND ADVERTISING BY LESSOR

12.1 Inspection by Lessor

The Lessor and the Lessee agree that it will be lawful for a representative of the Lessor at all reasonable times during the Term (and upon delivery of at least five (5) business days' prior written notice to the Lessee and subject to the observance by the Lessor of the Lessee's reasonable requirements regarding Building and Building Occupants' security and privacy) to enter the Lands and the Buildings, or any of them and to examine the condition thereof; and, further, that all wants of reparation as required by Section 7.2 which upon such views may be found, and for the amendment of which notice will be delivered or given by the Lessor to the Lessee, the Lessee must within 60 days after every such notice or such longer period as provided in Section 19.2(a), well and sufficiently repair and make good accordingly.

12.2 Advertising by Lessor

During the final 12 months of the Term, the Lessor will be entitled to:

- (a) display upon the Lands any signs advertising the Lands and the Buildings as being available for purchase or lease or such other use as determined by the Lessor, if the signs are displayed in such a manner as will not interfere unreasonably with the Lessee's use of the Lands and the Buildings; and
- (b) show the Lands and Buildings to prospective occupiers.

ARTICLE 13
OBSERVANCE OF APPLICABLE LAWS

13.1 Applicable Laws

The Lessee covenants with the Lessor that throughout the Term the Lessee will comply with all Applicable Laws which relate to the construction of the Buildings, to the equipment and maintenance of the Buildings, to the operation, occupation and use of the Buildings or the Lands to the extent that the Lessee operates, occupies and uses the Buildings or the Lands whether by subletting the same or any part thereof or otherwise prior to the making of any repairs, replacements, alterations, additions, changes, substitutions or improvements of or to the Buildings, the Lands or any part thereof.

13.2 Environmental

Without derogating from the Lessee's obligation under Section 13.1, the Lessee covenants and agrees with the Lessor to:

- (a) develop and use the Lands and Buildings only in compliance with all Environmental Laws;
- (b) at the reasonable request of the Lessor (and subject to the observance by the Lessor of the Lessee's reasonable requirements regarding Building and Building Occupants' security and privacy), permit the Lessor to investigate the Lands and Buildings, and any goods thereon;
- (c) at the reasonable request of the Lessor and provided that the Lessor, acting reasonably, has reason to believe that the Lands and the Buildings are not in compliance with Environmental Laws, obtain from time to time at the Lessee's cost a report from an independent consultant designated or approved by the Lessor verifying compliance with Environmental Laws and this Lease or the extent of any non-compliance therewith;
- (d) except in compliance with all Environmental Laws, not store, manufacture, dispose, treat, generate, use, transport, remediate, or Release Environmental Contaminants on or from the Lands or Buildings without notifying the Lessor in writing and receiving prior written consent from the Lessor with respect thereto, which consent may be unreasonably or arbitrarily withheld;
- (e) if required by any Environmental Laws, promptly remove any Environmental Contaminants from the Lands or Buildings in a manner which conforms to Environmental Laws governing their removal; and
- (f) notify the Lessor in writing:
 - (i) within seven (7) days of discovery thereof, of any enforcement, clean up, removal, litigation, or other governmental, regulatory, judicial, or administrative action instituted or threatened in writing against the Lessee, the Lands, or the Buildings pursuant to any Environmental Laws;

- (ii) within seven (7) days of all claims, actions, orders, or investigations instituted or threatened in writing by any third party against the Lessee, the Lands, or the Buildings relating to damage, contribution, cost recovery, compensation, loss, or injuries resulting from any Environmental Contaminants or any breach of the Environmental Laws; and
- (iii) within seven (7) days of discovery thereof, of the discovery of any Environmental Contaminants or any occurrence or condition on the Lands or Buildings or any real property adjoining or in the vicinity of the Lands which could subject the Lessee, the Lands, or the Buildings to any fines, penalties, orders, or proceedings under any Environmental Laws.

13.3 Lessor May Make Enquiries

The Lessee hereby authorizes the Lessor to make enquiries from time to time of any governmental authority with respect to the compliance by the Lessee with Environmental Laws in connection with the Lands or the Buildings, and the Lessee agrees that the Lessee will from time to time provide to the Lessor such written authorization as the Lessor may reasonably require in order to facilitate the obtaining of such information; provided that the Lessor will keep any and all such information in strict confidence and shall not disclose any such information unless disclosure is first approved in writing by the Lessee or required by operation of any Applicable Laws.

13.4 Environmental Indemnity and Release

The Lessee hereby releases and shall indemnify and save harmless the Indemnified Parties from and against any liabilities, damages, losses, interest, penalties, fines, monetary sanctions, costs, expenses or claims (including without limitation reasonable costs of legal counsel and other professional advisors, consultants and experts in the defense, investigation, and resolution of such claim and costs of any remedial or other management action related thereto) (collectively, the “**Claims**”) that occur or arise as a result of:

- (a) any breach by the Lessee of any provisions of this Article 13,
- (b) the Lessee or any of its employees, officers, trustees, directors, agents, invitees, contractors, and others for whom they are in law responsible for causing or having caused, during the Term, any Release of any Environmental Contaminants at, in, on, under or about the Lands or Buildings in breach of Environmental Laws;
- (c) any claims brought by any third party, including but not limited to any governmental authority, and any orders made by any governmental authority with respect to any Environmental Contaminants on or at the Lands or Buildings; and
- (d) any claims brought by any third party, including but not limited to any governmental authority, and any orders made by any governmental authority with respect to any Environmental Contaminants migrating from the Lands or Buildings.

The provisions of this Section 13.4 shall survive the expiration or earlier termination of this Lease.

ARTICLE 14
RIGHTS OF LESSOR AND LESSEE

14.1 Rights of Lessor and Lessee

All rights and benefits and all obligations of the Lessor and the Lessee under this Lease are rights, benefits and obligations of the Lessor and the Lessee respectively in their capacities as Lessor and Lessee respectively under this Lease, and references in this Lease to the “**Lessor**” will be to the District in its capacity and role as landlord under this Lease and as registered owner of the Lands and not to the District in its capacity as the municipal government with regulatory powers with respect to the Lands.

ARTICLE 15
RELEASE, INDEMNITY AND LIMITATION OF LIABILITY

15.1 Indemnification of the Indemnified Parties by the Lessee

Except in each case to the extent attributable to the gross negligence or wrongful intentional acts on the part of the Indemnified Parties, the Lessee covenants and agrees to defend, indemnify and save harmless the Indemnified Parties from and against all damages, losses, actions, causes of action, suits, judgments, claims, demands, builders liens, liabilities, expenses (including, without limitation, legal expenses on a solicitor and own client basis), costs, indirect or consequential damages (including, without limitation, loss of profits and loss of use and damage arising out of delays) which may arise or accrue to any person, firm or corporation against the Indemnified Parties or any of their respective contractors and subcontractors which the Indemnified Parties may pay, incur, sustain or be put to arising out of or in any way connected with, or that would not or could not be made or incurred but for unremedied breaches or violations by the Lessee of its obligations under this Lease.

Without derogating from the generality of the foregoing, the Lessee agrees to defend, indemnify and save harmless the Indemnified Parties in respect of:

- (a) all manner of actions, causes of action, suits, judgments, damages, loss, costs, claims and demands of any nature whatsoever relating to and arising during the Term or any period of over holding out of:
 - a) bodily injury or death;
 - b) property damage; or
 - c) other loss or damage,resulting from:
 - d) the conduct of any work;
 - e) any act or omission; or
 - f) relating to or arising from the occupation or possession of the Lands or any portion thereof including any Building on the Lands,

by the Lessee or any assignee, subtenant, agent, employee, contractor, subcontractor, invitee or licensee of the Lessee;

- (b) all costs, expenses and liabilities incurred by the Indemnified Parties in connection with or arising out of all such claims, including, without limitation, the expenses of any action or legal proceeding pertaining thereto on a solicitor and own client basis;
- (c) the liabilities or obligations incurred or sustained by or imposed upon the Indemnified Parties; and
- (d) any and all manner of actions, causes of action, suits, judgments, administrative proceedings, damages, losses, costs, expenses (including without limitation, legal expenses on a solicitor and own client basis), builder's liens, claims and demands of any nature whatsoever,

arising from any breach, violation or non-performance of any covenant, proviso, condition or agreement contained in this Lease on the part of the Lessee to be fulfilled, kept, observed or performed.

15.2 Limitation of Liability of the Lessor

The Lessee acknowledges and agrees that the Lessor, when involved in:

- (a) inspecting and approving plans;
- (b) inspecting buildings, utilities, structures; or
- (c) inspecting other things,

requiring a permit for their construction, renovation, repair or reconstruction, owes no legal duty of care to the Lessee, its officers, employees, agents, contractors, subcontractors, successors and assigns on which a cause of action can be based, to ensure that plans, buildings, utilities, structures or other things so constructed, renovated, repaired or reconstructed on the Lands or on lands in proximity to the Lands, comply with all Applicable Laws.

The Lessee further acknowledges and agrees that the Lessor is not liable for damages of any nature (including, without limitation, indirect or consequential damages such as loss of profits or loss of use and damage arising out of delays) sustained by the Lessee for any reason or in any manner, arising from any act of the Lessor to:

- (d) discover or detect contraventions of; or
- (e) enforce,

the housing agreement, any District bylaws, provisions, orders or other things in respect of the Lands, except to the extent such liability arises as a result of any gross negligence or wrongful intentional acts on the part of the Indemnified Parties including any Building on the Lands.

15.3 Release and Indemnification of the Indemnified Parties

The Lessee does hereby remise, release and forever discharge, and does hereby covenant and agree to defend, indemnify and save harmless the Indemnified Parties, from and against all damages, losses, actions, causes of actions, claims, demands, builder's liens, liabilities, judgments, expenses (including without limitation, legal expenses on a solicitor and own client basis), costs, indirect or consequential damages (including, without limitation, loss of profits and loss of use and damage arising out of delays) which may arise or accrue to the Lessee or any person, firm or corporation against the Indemnified Parties, arising out of or in any way connected with:

- (a) the construction of the Buildings; or
- (b) their later renovation, repair, or reconstruction from time to time, including, without limitation, any failure to complete construction, renovation, repair, and/or reconstruction of the Buildings, however arising; and
- (c) inspecting and approving plans or inspecting buildings, utilities, structures or other things requiring a permit for their construction.

Without limiting the other provisions of this Article 15, the Lessee does further remise, release and forever discharge and does hereby covenant and agree to defend, indemnify and save harmless the Indemnified Parties for damages of any nature (including, without limitation, indirect or consequential damages such as loss of profits or loss of use and damage arising out of delays) sustained by the Lessee for any reason or in any manner, of the Lessor to:

- (d) discover or detect contraventions of; or
- (e) enforce,

any District bylaws, provisions, orders or other things in respect of the Lands, including any Building on the Lands, except to the extent such liability arises as a result of any gross negligence or wrongful intentional acts on the part of the Indemnified Parties.

15.4 Indemnification Services: Termination of Lease

The obligations of the Lessee to defend, indemnify and save harmless the Indemnified Parties under the provisions of this Lease will, apply and continue notwithstanding the termination of this Lease or breach of this Lease by the Lessor, or anything in this Lease to the contrary notwithstanding.

ARTICLE 16 SUBLETTING AND ASSIGNING

16.1 Subletting by Lessee – Other Than by Way of Mortgage

Save as expressly provided in Section 16.3, the Lessee must not during the Term sublease the Lands or any part thereof or any structure or any part of any structure erected thereon to any person, persons or corporation whatsoever, other than pursuant to the housing agreement reference to in section 5.1, without

the consent in writing of the Lessor, which consent the Lessor may arbitrarily withhold; PROVIDED HOWEVER that:

- (a) if Basic Rent and Additional Rent and taxes or amounts in lieu of taxes have been paid and the Lessee is not then in default in the performance or observance of the other covenants, provisos and agreements required of the Lessee to be performed and observed, the Lessee may from time to time without the consent of the Lessor, enter into and renew subleases with lessees or occupants of the units in the Buildings, such units to be used by the lessees or occupants in accordance with the Land Use Requirements, including the housing agreement referred to in section 5.1;
- (b) notwithstanding any such consent being given by the Lessor under this Section 16.1 and such subleasing being effected, the Lessee will remain bound to the Lessor for the fulfilment of all of its obligations hereunder;
- (c) the Lessee must sublet approximately 3,000 square feet interior space and adjacent dedicated outdoor space of approximately 1,000 square feet to Vancouver Coastal Health Authority ("VCH") for the purpose of an adult day centre for the term requested in writing by VCH up to 60 years and for no later than the expiry of the Term, provided that upon vacation of the space by VCH or any other subtenant, the Lessee must obtain the prior consent in writing of the Lessor for any other use of VCH's space or any sublease of VCH's space, which consent the Lessor may arbitrarily withhold.

16.2 Assignment by Lessee – Other Than by Way of Mortgage

- (a) The Lessee must not during the Term (other than by way of Mortgage as permitted in or by Section 16.3 assign, transfer or sell (including change of control (as that term is defined in the *Business Corporations Act* (BC)) of the Lessee) or otherwise, by any act or deed, cause the Lands or the Buildings, or any of them, or this Lease, to be assigned, transformed or sold to any person, persons or corporation whatsoever without the consent in writing of the Lessor, acting reasonably, provided as set forth in Sections 16.2(b) and 16.2(c).
- (b) Provided that the Lessor, in considering a request by the Lessee that such an assignment be approved, will be acting reasonably in taking into account the following matters, and if the Lessor is not satisfied as to any of such matters, the Lessor will be acting reasonably in refusing to approve the proposed assignment:
 - a) the reputation and experience of the proposed assignee and the nature of the business of the proposed assignee;
 - b) the financial standing and capability of the proposed assignee (as evidence of which the three most recent financial statements of the proposed assignee must be provided to the Lessor), including, without limitation, evidence that the proposed assignee will be able to secure a lender to finance construction of the Buildings and all ancillary facilities, and evidence that there are no actions, suits, claims, legal or administrative proceedings or investigations, private or public, pending or threatened, which might affect the proposed assignee's ability to fulfill all the covenants and agreements of the Lessee under this Lease;

- c) the ability of the Lessee and the proposed assignee to arrange that the proposed assignee, following the assignment, will have full ability to perform the covenants and agreements of the Lessee under this Lease, including, without limitation, evidence that all drawings, plans, specifications, designs, applications, permits, approvals and contracts relating to the construction of the Buildings and all facilities ancillary thereto will be assigned to the proposed assignee; and
 - d) past and present dealings of the proposed assignee with the District.
- (c) Provided however that the Lessor will also be acting reasonably and will be entitled arbitrarily to withhold its consent to an assignment:
- a) if the Lessee is in default in the performance and observance of any of the covenants, provisos and agreements required of the Lessee to be performed and observed under this Lease or any restrictive covenant registered against the Lands in priority to this Lease;
 - b) if the Basic Rent to be paid by the Lessee to the Lessor under Section 3.1 has not been paid in full;
 - c) unless the proposed assignee enters into an agreement, in form and content satisfactory to the Lessor with the Lessor whereby the proposed assignee covenants directly with the Lessor and agrees to be bound by and comply with all the covenants, provisos and agreements required of the Lessee to be performed and observed under this Lease; and
 - d) unless the proposed assignee enters into an agreement with the Lessor, in form and content satisfactory to the Lessor, whereby the Lessor covenants and agrees to pay the Lessor on the date of the assignment eighty per cent (80%) of any positive increase between:
 - (A) the Basic Rent, and
 - (B) the consideration received by the Lessee under the assignment.

16.3 Mortgaging by Lessee

The Lessee will have the right, without the consent of the Lessor, at any time and from time to time to mortgage its leasehold estate in the Lands under this Lease, whether by Mortgage, assignment or sublease and, inter alia, to give security by way of any Mortgage, assignment of rents or other security and to extend, modify, renew, vary or replace any such Mortgage, assignment or other security. A copy of any or all Mortgages will be furnished to the Lessor, together with particulars of registration in the LTO, if applicable, within 30 days following any such registration.

ARTICLE 17

MORTGAGE

17.1 Rights of Mortgagee

Notwithstanding anything to the contrary in Article 16, the Mortgagee under any Mortgage referred to in Section 16.3 may enforce the Mortgage or such other security as may be granted to the Mortgagee and acquire title to the leasehold estate of the Lessee in any lawful way and may (including without limitation by a receiver or a representative, as the case may be), take possession of and manage the Lands and in enforcing its security, may freely sell, assign or otherwise transfer the leasehold estate without consent of but on notice to the Lessor, and the purchaser, assignee, or transferee of the leasehold estate will be liable to perform the obligations imposed upon the Lessee by this Lease and the housing agreement referred to in section 5.1 only so long as such purchaser, assignee or transferee has ownership or possession of such leasehold estate.

17.2 Notice to and Remedies of Mortgagee

- (a) No re-entry, termination, acceptance of surrender, disclaimer or forfeiture of this Lease or distress by the Lessor or by a receiver, interim-receiver, receiver-manager, liquidator, custodian or trustee will be valid against any Mortgagee who has executed and delivered to the Lessor a tripartite agreement in the form attached hereto as Schedule B (or such other form as may be approved by the Lessor and any Mortgagee, each acting in a commercially-reasonable manner) unless the Lessor will first have given to the Mortgagee notice of any default entitling the Lessor to re-enter, terminate or forfeit this Lease, specifying the nature of that default and stating the Lessor's intention to take such proceedings and requiring the Mortgagee:
 - a) to cure the default specified in the notice within a period of 60 days from the date of receipt of that notice by the Mortgagee; or
 - b) if the default is other than the failure to pay Rent or any other sums required to be paid by the Lessee by any provisions of this Lease and if the default cannot reasonably be cured within such 60 day period, then to immediately commence to cure the same and to diligently prosecute to conclusion all acts necessary to cure the default and the Lessor hereby grants the Mortgagee access to the Lands and the Buildings for that purpose.
- (b) If the default is cured within the period specified, the Mortgagee (or any other entity designated by the Mortgagee by written notice to the Lessor) will be entitled to become tenant of the Lands and Buildings in the place and stead of the Lessee for the balance of the Term remaining at the date of the notice of default or contingency, providing that the Mortgagee (or such designated entity) attorns as tenant to the Lessor and undertakes to be bound by and to perform the covenants and agreements of the Lessee under this Lease and the housing agreement referred to in section 5.1 from the date and for so long as the Mortgagee (or such designated entity) remains tenant and has not assigned the balance of the Term; PROVIDED however that in the event the Mortgagee consists of more than one Mortgagee each having a separate charge upon the Lessee's interest in this Lease, and more than one of them wishes to cure the default or contingency specified in the notice aforesaid, then the Lessor hereby agrees to permit curing of the

default or contingency specified as aforesaid and the assumption of the balance of the Term as aforesaid by that Mortgagee (or such designated entity) which is willing to cure and assume as aforesaid and whose charge ranks in priority over the charge or charges held by the other Mortgagee or Mortgagees willing to cure and assume as aforesaid; EXCEPT that in the event any Mortgagee has commenced a foreclosure action the provisions of Section 17.2(c) will apply.

- (c) In the event the Mortgagee commences foreclosure proceedings against the Lessee, whether or not the Lessee is in default of the performance of its covenants and agreements with the Lessor under this Lease at the time such foreclosure proceedings are commenced, the Lessor must not re-enter, terminate or forfeit this Lease after the commencement of foreclosure proceedings on the ground of any default or contingency entitling the Lessor to re-enter, terminate or forfeit this Lease if the Mortgagee:
- a) has first given to the Lessor notice of the foreclosure proceedings;
 - b) is actively prosecuting the foreclosure proceedings without undue delay;
 - c) cures the default or contingency within a period of 60 days from the date of receipt of notice from the Lessor specifying the nature of the default or contingency, or if the default or contingency is other than the failure to pay Rent or any other sums required to be paid to the Lessor by any provision of this Lease and if such default or contingency cannot be reasonably be cured within such 60 day period, immediately commences to cure the same and to diligently prosecute to conclusion all acts necessary to cure the default or contingency; and
 - d) performs and observes all of the Lessee's covenants and agreements under this Lease and without undue delay diligently prosecutes to a conclusion the foreclosure proceedings commenced by the Mortgagee.

In the event that the Mortgagee (or another entity designated by the Mortgagee) acquires title to the Lessee's interest in the Lands and the Buildings under the foreclosure proceedings, the Mortgagee will thereupon become subrogated to the rights of the Lessee under this Lease, provided it (or such designated entity) attorns to the Lessor as tenant and undertakes to the Lessor to be bound by and to perform the covenants and agreements of this Lease and the housing agreement referred to in section 5.1 for so long as it remains tenant and has not assigned the balance of the Term. PROVIDED HOWEVER that in the event the Mortgagee consists of more than one Mortgagee and more than one of them commences foreclosure proceedings, the right to cure any default or contingency granted by this Section 17.2(c) to a foreclosing Mortgagee will be deemed granted to them in the order or priority of the charges held by the foreclosing Mortgagees.

- (d) If this Lease is subject to termination or forfeiture under Article 18 by reason of the bankruptcy or insolvency of the Lessee and the Mortgagee has filed with the Lessor notice of Mortgage in favour of the Mortgagee and specified an address for notice under Article 26, the Lessor must give to the Mortgagee notice of the bankruptcy or insolvency of the Lessee entitling the Lessor to terminate or forfeit this Lease and stating the

Lessor's intention to take such proceedings and requiring the Mortgagee to cure any other default of the Lessee and the Lessee's other default shall be deemed to have been sufficiently cured if the Mortgagee:

- a) commences foreclosure proceedings against the Lessee as more particularly set out in Section 17.2(c);
- b) takes possession and control of the Lands and Buildings, or causes a receiver to be appointed under terms of the Mortgage or by a court of competent jurisdiction, who takes possession and control of the Lands and the Buildings, and the Lessor hereby grants the Mortgagee or such receiver access to the Lands and the Buildings for the purpose;
- c) cures every default within a period of 60 days from the date of receipt by the Mortgagee of the notice from the Lessor of the bankruptcy or insolvency of the Lessee, or if such default or defaults are other than the failure to pay Rent or any other sums required to be paid to the Lessor by any provision of this Lease and if such default or defaults cannot reasonably be cured within such 60 day period, immediately commences to cure the same and to diligently prosecute to conclusion all acts necessary to cure default or defaults, and
- d) (or such designated entity) attorns as tenant to the Lessor and undertakes to the Lessor to be bound by and to perform the covenants and agreements of this Lease and the housing agreement referred to in section 5.1 for so long as it remains tenant and has not assigned the balance of the Term,

PROVIDED HOWEVER that in the event the Mortgagee consists of more than one Mortgagee the right to take possession and control, to cure any default and to assume this Lease as aforesaid will be deemed granted to them in the order of the priority of their respective charges.

- (e) Any re-entry, termination or forfeiture of this Lease made in accordance with the provisions of this Lease as against the Lessee will be valid and effectual against the Lessee even though made subject to the rights of any Mortgagee to cure any default of the Lessee and to continue as tenant under this Lease.
- (f) No entry upon the Lands or into the Buildings by the Mortgagee under this Section 17.2 for the purpose of curing any default or defaults of the Lessee will release or impair the continuing obligations of the Lessee.

17.3 Mortgagee Subject to Lessor's Rights under this Lease

Subject to the provisions of Section 17.2, every Mortgage must be made expressly subject to the rights of the Lessor under this Lease and the housing agreement referred to in section 5.1.

17.4 Protection of Mortgagee (Tri-Partite Agreements)

The Lessor and the Lessee agree that the obligations of the Lessor under Section 17.2 are subject to the Mortgagee entering into an agreement in the form attached hereto as Schedule B (or such other form as may be approved by both the Lessor and any Mortgagee, each acting in a commercially-reasonable

manner) whereby the Mortgagee covenants and agrees that if it (or any other entity designated by the Mortgagee by written notice to the Lessor) acquires title to the Lessee's interest in this Lease but only for so long as it holds such title, it must perform and observe the covenants and agreements required of the Lessee to be performed and observed, if not performed or observed by the Lessee, whether or not the Lessor has taken any steps to enforce performance or observance of any of the covenants and agreements in this Lease to be performed or observed by the Lessee.

ARTICLE 18

BANKRUPTCY OF LESSEE

18.1 Events of Bankruptcy or Receivership

The parties agree, subject to the provisions of Sections 17.2 and 17.4, that:

- (a) if the Lessee makes a general assignment for the benefit of creditors; or
- (b) if the Lessee institutes proceedings to be adjudicated bankrupt or insolvent or consents to the institution of bankruptcy or insolvency proceedings against the Lessee or files an application or petition or answer or consent, seeking re-organization or re-adjustment of the indebtedness of the Lessee under the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act* or any law of Canada or any province thereof relating to bankruptcy or insolvency or consents to the filing of any such application or petition or consents to the appointment of a receiver, interim-receiver, receiver-manager, trustee, liquidator, or custodian; or
- (c) if a receiver, interim-receiver, receiver-manager, trustee, liquidator or custodian of all or substantially all of the property of the Lessee or of the Lessee's leasehold interest in the Lands and interest in the Building is appointed or applied for the Lessee or appointed under an instrument or by order of a court; or
- (d) if a judgment, decree or order is entered by a court of competent jurisdiction adjudging the Lessee a bankrupt or insolvent or subject to the provisions of the *Bankruptcy and Insolvency Act* or determining that proceedings for re-organization, arrangement, adjustment, composition, liquidation, or any similar relief under the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act* or any law of Canada or any province thereof relating to bankruptcy or insolvency have been properly instituted otherwise than by the Lessee, provided that such judgment, decree or order is not in good faith contested by the Lessee; or
- (e) if any application or petition or certificate or order is made or granted for the winding up or dissolution of the Lessee voluntary or otherwise,

then the receiver, interim-receiver, receiver-manager, liquidator, custodian or trustee will have the right to disclaim this Lease or to hold and retain the Lands and the Buildings for a period not exceeding six months from the effective date of any such appointment, receiving order, assignment, judgment, decree, order or the commencement of dissolution or winding up, as the case may be, or until the expiration of the Term, whichever first happens on the same terms and conditions as the Lessee might have held the Lands and the Buildings had no such appointment, receiving order, assignment, judgment, decree or order been made or dissolution or winding-up commenced.

- 18.2 If the receiver, interim-receiver, receiver-manager, trustee, liquidator or custodian holds and retains the Lands and the Buildings as set out in section 19.1, they must during the six months, referred to in section 19.2, either:
- a) surrender possession at any time and the Term will thereupon terminate; or
 - b) appoint an operator for the residential below market rental housing under this Lease and the housing agreement referred to in section 5.1 as a new lessee that is approved in advance in writing by the Lessor, which approval will be in the absolute discretion of the Lessor.

18.3 Certain Rights of the Parties

The Lessor and the Lessee agree that:

- (a) Should the receiver, interim-receiver, receiver-manager, liquidator, custodian or trustee at any time before or after taking possession, disclaim this Lease or surrender possession to the Lessor, his liability and the liability of the estate of the Lessee and the Lessee for payment of Rent is limited to the period of time during which the receiver, interim-receiver, receiver-manager, liquidator, custodian or trustee remains in possession of the Lands and the Buildings for the purposes of the trust estate. If the receiver, receiver-manager, liquidator, custodian or trustee disclaims this Lease or surrenders possession, the Lessor or the Lessor's agents or employees authorized by the Lessor may immediately or at any time thereafter re-enter the Lands and the Buildings without being liable for any prosecution or damages therefor, and may repossess and enjoy the Lands and the Buildings and all fixtures and improvements therein and thereon, except fixtures and improvements which are of the nature of usual tenants' fixtures and normally removable by tenants and which are not part of the Buildings or the Lands and such receiver, interim-receiver, receiver-manager, liquidator, custodian or trustee must execute a surrender or assignment to the Lessor in registrable form.
- (b) Entry into possession of the Lands and the Buildings by the receiver, interim-receiver, receiver-manger, liquidator, custodian or trustee and its occupation by him while required for the purposes of the performance of his duties in his office will not be deemed to be evidence of an intention on his part to retain the Lands and the Buildings, nor affect his right to disclaim or to surrender possession under the provisions of Section 18.1 or 18.2.
- (c) If after occupation of the Lands and the Buildings, the receiver, interim-receiver, receiver-manager, liquidator, custodian or trustee elects to retain it and thereafter sells, transfers or otherwise disposes of this Lease, the Lands and the Buildings and all interests and rights of the Lessee therein and hereunder to a person approved by the court as provided by Section 18.1 or 18.2, their liability and the liability of the Lessee and their estate for the payment of any Rent, if any, is limited to the period of time during which they remain in possession of the Lands and the Buildings.

18.4 No Abatement of Rent

The receiver, interim-receiver, receiver-manager, liquidator, custodian or trustee must pay to the Lessor for the period during which the receiver, interim-receiver, receiver-manager, liquidator, custodian or

trustee actually occupies the Lands and the Buildings under Section 18.1 or 19.2 hereof any Rent payable by the Lessee to the Lessor under this Lease during any such period of occupancy.

ARTICLE 19

DEFAULT BY LESSEE

19.1 Re-entry on Default by Lessee

The Lessor and the Lessee agree that, subject to the provisions of Sections 10.1 and 17.2, if:

- (a) the Lessee defaults in payment of any Rent required to be paid to the Lessor by any provision of this Lease, and such default continues for a period of 60 days after written notice of intention to terminate this Lease by reason of such default has been given by the Lessor to the Lessee,
- (b) subject to Section 4.4(b) and Section 10.1, the Lessee defaults in ensuring Commencement of Construction of the Buildings by the dates set forth in Section 4.3, and the default continues for a period of 60 days after written notice of intention to terminate this Lease by reason of such default has been given by the Lessor to the Lessee,
- (c) the Lessee defaults in ensuring that the Building and any District works, services and facilities required under the Development Permit or Building Permit are Substantially Completed by the dates set forth in section 4.3,

the Lessor or the Lessor's agents or employees authorized by the Lessor may immediately or at any time thereafter re-enter the Lands and the Buildings without being liable to any prosecution or damages therefor and may repossess and enjoy the Lands, the Buildings and all fixtures and improvements on the Lands except fixtures and improvements which are of the nature of usual tenants' fixtures and normally removable by tenants, and which are not part of the Buildings or the Lands, as liquidated damages, without such re-entry and repossession constituting a forfeiture or waiver of the Rent paid or to be paid to the Lessor, all of which Rent may be retained by the Lessor as liquidated damages and not as a penalty and without forfeiture or waiver of the covenants to be performed by the Lessee up to the date of such re-entry and repossession.

19.2 Forfeiture on Certain Other Defaults by Lessee

The Lessor and the Lessee agree that, subject to the provisions of Sections 10.1 and 17.2, if

- (a) the Lessee defaults in performing or observing any of its covenants or obligations under this Lease (other than those referred to in Section 19.1 and the Lessor has given to the Lessee notice of such default and at the expiration of 60 days after the giving of such notice the default continues to exist or, in the case of a default which cannot with due diligence be cured within the period of 60 days aforesaid, the Lessee fails to proceed promptly after the giving of such notice to cure such default; and
- (b) the Lessor desires to re-enter the Lands and to repossess and enjoy the Lands and the Buildings and all fixtures and improvements thereon (except fixtures and improvements

which are of the nature of usual tenants' fixtures and normally removable by tenants, and which are not part of the Lands and the Buildings),

the Lessor must unless the Lessee voluntarily surrenders the Lands and the Buildings to the Lessor, apply to the Supreme Court of British Columbia, upon not less than 14 days' notice to all persons interested in the Lands and the Buildings, for a court order that, either:

- a) the interest of the Lessee in this Lease and the Lands and the Buildings for the remainder of the Term and all the rights of the Lessee hereunder be sold by public auction or private sale on such terms and conditions as the Court deems fair and equitable in the circumstances, the proceeds therefrom to be distributed, after all Rent and other money due to the Lessor hereunder is paid to the Lessor, in accordance with the priorities of the persons interested as aforesaid as ascertained by the Court upon enquiry or reference; or
- b) the Lessor or the Lessor's agents or employees be authorized to re-enter the Lands and the Buildings without being liable to any prosecution or damages therefor, and repossess and enjoy the Lands and the Buildings and all fixtures and improvements (except for fixtures and improvements which are of the nature of usual tenants' fixtures and normally removable by tenants, and which are not part of the Buildings or the Lands), as liquidated damages, without such re-entry and repossession causing a forfeiture or waiver of the Rent and other money paid or to be paid to the Lessor, all of which Rent may be retained by the Lessor as liquidated damages and not as a penalty and without forfeiture or waiver of the covenants to be performed by the Lessee up to the date of such re-entry and repossession, and

in ordering such sale or re-entry, the Court may direct the LTO Registrar to register a discharge of the Lessee's interest in the Lands and the Buildings. The Lessor will not be responsible for any loss to any such person interested, which loss may arise by reason of any such sale or re-entry unless the same occurs by reason of the wilful neglect or default of the Lessor.

19.3 Right to Cure

The Lessor and the Lessee agree that if the Lessee defaults in performing or observing any of its covenants or obligations under this Lease and the Lessor has given to the Lessee notice of such default and at the expiration of 60 days after the giving of such notice the default continues to exist or, in the case of a default which cannot with due diligence be cured within the period of 60 days aforesaid, the Lessee fails to proceed promptly after the giving of such notice to cure such default, the Lessor will have the right and licence, at any time, and from time to time, without any liability for trespass or otherwise, to enter upon the Lands and Buildings to cure the default of the Lessee, and any costs so incurred by the Lessor in curing such default, will be payable to the Lessor under this Lease as Additional Rent. Without limitation, any amount paid by the Lessor in making such repairs to the Lands and the Buildings or any part or parts thereof, together with all costs and expenses of the Lessor must be reimbursed to the Lessor by the Lessee on demand together with:

- (a) interest at the rate of 6% per annum above the Prime Rate from the date incurred until paid; and
- (b) an administrative charge in an amount of fifteen percent (15%) of such amount paid,

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and may be recovered by the Lessor as Additional Rent

19.4 Remedies of Lessor are Cumulative

The remedies of the Lessor specified in this Lease are cumulative and are in addition to any remedies of the Lessor at law or equity. No remedy will be deemed to be exclusive, and financial damages are not an adequate remedy, and the Lessor may from time to time have recourse to one or more or all of the available remedies specified herein or at law or equity. In addition to any other remedies provided in this Lease, the Lessor will be entitled to restrain by injunction any violation or attempted or threatened violation by the Lessee of any of the covenants or agreements hereof.

19.5 Waiver by Lessor

The failure of the Lessor to insist upon the strict performance of any covenant or agreement of this Lease will not waive such covenant or agreement, and the waiver by the Lessor of any breach of any covenant or agreement of this Lease will not waive such covenant or agreement in respect of any other breach. The receipt and acceptance by the Lessor of rent or other monies due hereunder with knowledge of any breach of any covenant or agreement by the Lessee will not waive such breach. No waiver by the Lessor will be effective unless made expressly in writing.

ARTICLE 20 COVENANTS OF LESSOR

20.1 Covenant Respecting Charges and Encumbrances

The Lessor covenants with the Lessee that the Lessor has a good and marketable title in fee simple to the Lands and that the Lessor has not at any time hereto before made, done, committed, executed or wilfully or knowingly suffered any act, deed, matter or thing whatsoever whereby or by means whereof the Lands or any part thereof are charged or encumbered in title or estate other than the subsisting Permitted Encumbrances, the exceptions and reservations contained in the original grant of the Lands from the Crown and any restrictive covenants and/or easements and/or rights of way in favour of the District or other public bodies which may be agreed to by the Lessee to be registered against the Lands as of the Effective Date.

The Lessee shall be entitled to register a "Notice of Interest" in the LTO with respect to its interest as an "owner" on the Lands (all as defined in the *Builders Lien Act*) and all costs and expenses in connection with the registration shall be borne by the Lessee.

20.2 Lessor Estoppel Certificates

The Lessor agrees to provide (at the written request of, and at the sole cost of, the Lessee from time to time during the Term and in a form to be prepared by the Lessee, acting reasonably) estoppel certificates confirming the key terms of this Lease and whether the Lessee is then in default of any of the Lessee's obligations under this Lease.

20.3 Covenant Respecting Authority to Lease

The Lessor covenants with the Lessee that it now has in itself good right, full power and authority to lease the Lands to the Lessee in the manner and according to the intent of this Lease.

ARTICLE 21

DISPUTE RESOLUTION

21.1 Dispute Resolution

If a dispute arises between the parties relating to this Lease, or arising out of this Lease, the parties agree to use the following procedure as a condition precedent to any party pursuing other available remedies:

- (a) The parties shall attempt in good faith to resolve the dispute promptly by negotiation. However, at any time, a party may give the other party written notice (the “**Initial Notice**”) of any dispute not so resolved. Within 30 days after delivery of an Initial Notice, the recipient party shall deliver to the other a written response. Both the Initial Notice and the response must include a statement of that party’s position, a summary of arguments supporting that position, and the name and contact particulars of the person who will represent that party and of any other person who will accompany the representative. Within 60 days after delivery of the Initial Notice, the representatives of the parties (and any persons intended to accompany same as specified in the Initial Notice or response, as applicable) shall meet at mutually acceptable times and places, as often as they reasonably deem necessary, to attempt to resolve the dispute.
- (b) All negotiations pursuant to Section 21.1(a) are confidential and are to be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.
- (c) If the negotiations pursuant to section 21.1(a) are not successful, either party may notify the other by written notice (the “**Dispute Notice**”) of the existence of a dispute and a desire to resolve the dispute by mediation. If the other party agrees to submit the dispute to mediation, the parties will bear equally the costs of mediation. The parties will jointly appoint a mutually acceptable mediator, seeking assistance from the “roster organization” defined in the Notice to Mediate (General) Regulation (as amended or replaced)”, they have been unable to agree upon such appointment within 30 days following delivery of the Dispute Notice. The parties agree to participate in good faith in the mediation and negotiations related thereto for a period of 30 days following appointment of the mediator, or for such longer period as the parties may agree. If the parties are not successful in resolving the dispute through mediation, or if the mediation has not commenced within 90 days following the delivery of the Dispute Notice, then either party may initiate litigation proceedings upon 14 days’ written notice to the other parties, provided, however, that the parties may agree to proceed by way of arbitration instead of litigation.
- (d) Notwithstanding any other provision of this Lease, a party may seek injunctive relief (whether as a temporary restraining order, preliminary injunction or otherwise) or specific performance and this Article 21 will not apply to any such action or proceeding.

ARTICLE 22
CERTAIN COVENANTS AND AGREEMENTS OF LESSEE

22.1 Conduct on Demised Premises

Taking into account that during construction of the Buildings, the Lands will be operated as a normal construction site, the Lessee covenants and agrees with the Lessor that it will not carry on or do, nor allow to be carried on or done upon the Lands or in the Buildings any work, business or occupation which may be a nuisance or which may be contrary to any Applicable Law for the time being in force.

22.2 Covenant Respecting Charges and Encumbrances

- (a) In this Section;
 - a) **“Assumed Agreements”** means, collectively, all charges or encumbrances registered against title to the Lands and all agreements filed as legal notations on title to the Lands as of the Effective Date;
 - b) **“Ongoing Benefits”** means all rights, benefits and interest of a party derived from and under each of the Assumed Agreements; and
 - c) **“Ongoing Obligations”** means all covenants, terms, provisos, stipulations, conditions, obligations and liabilities of a party contained in, existing by virtue of or arising out of each of the Assumed Agreements, including, without limitation, the obligations and responsibilities in respect of ongoing payment obligations and liabilities and the performance of all indemnities and releases.
- (b) For the Term, the Lessor hereby assigns, conveys and transfers to the Lessee the Assumed Agreements and the Ongoing Benefits of the Lessor, as owner of the Lands, for the sole use and benefit of the Lessee, all without the requirement or necessity of any further acts by or deliveries from the Lessor or the Lessee.
- (c) For the Term, the Lessee hereby assumes the Assumed Agreements and the Ongoing Obligations of the Lessor, as owner of the Lands and covenants to perform all Ongoing Obligations of the Lessor in accordance with the terms of the Assumed Agreements, except as otherwise agreed to by the Lessor and the Lessee in writing. The assumption made hereby is made in addition to all the Ongoing Obligations of the owner of the Lands and the Lessor.
- (d) The Lessee does hereby acknowledge and agree that the assumption under the Assumed Agreements and the Ongoing Obligations is made for the benefit of the Lessor and the other parties to the Assumed Obligations and may be enforced by such other parties directly against the Lessee, if applicable.

ARTICLE 23

SURRENDER OF LEASE

23.1 Surrender of Lease

At the expiration or sooner determination of the Term (and except following delivery of a Surrender Notice under Section 8.3), the Lessee must surrender the Lands and the Buildings to the Lessor in the condition in which they were required to be kept by the Lessee under the provisions of this Lease, except as herein otherwise expressly provided. The Lessee will not be entitled to any compensation from the Lessor for surrendering and yielding up to the Lessor, the Lands and the Buildings as aforesaid.

ARTICLE 24

QUIET ENJOYMENT AND OWNERSHIP OF LESSEE'S FIXTURES

24.1 Covenant for Quiet Enjoyment

The Lessor covenants and agrees that if the Lessee performs the Lessee's covenants under this Lease, the Lessee may peaceably enjoy and possess the Lands for the Term, without any interruption or disturbance whatsoever from the Lessor or any other person, firm or corporation lawfully claiming from or under the Lessor, provided however that nothing in this Section 24.1 will limit the rights of access reserved by the Lessor under Section 7.3, the rights of inspection conferred upon the Lessor by Section 12.1, the right of the Lessor to show the Lands and the Buildings and to post notice, under Section 12.2.

24.2 Nothing in this Lease limits the District's powers as a government to enforce its Applicable Laws.

24.3 Ownership of Lessee's Fixtures

The Lessee may confer upon Mortgagees, secured lenders, tenants or occupants of the Buildings the right of property in, or the right to remove fixtures or improvements which are of the nature of usual tenants' fixtures and normally removable by tenants, and which are not fixtures to the Buildings or the Lands.

Subject to Article 8, the Lessee must make good or cause such tenants to make good, any damage to the Buildings caused by any removal of the tenants' fixtures.

ARTICLE 25

OVERHOLDING

25.1 Overholding

The Lessee covenants and agrees with the Lessor that if the Lessor in writing consents to overholding and the Lessee holds over and if the Lessor accepts rent after the expiration of the Term, the new tenancy thereby created will only be a tenancy from month to month, at a rent which is the fair market rent of the Lands and Buildings as agreed between the Lessor and the Lessee, or, failing such agreement, as determined pursuant to Article 21, and not a tenancy from year to year and will be subject to the terms, covenants and conditions herein contained so far as the same are applicable to a tenancy from month to month.

ARTICLE 26
NOTICE

26.1 Notice

Any notice to be given under this Lease will be in writing and will be validly given if delivered, transmitted by email or mailed in British Columbia by prepaid registered post to the parties as follows:

(a) To the Lessee at:

Kiwanis North Shore Housing Society

100 – 975 21st Street
West Vancouver, BC V7V 0B5

Attention: Stefan Baune, Executive Director
Email: stefan@kiwanisnorthshorehousing.org

with a copy to the Lessee's Solicitors at:

Kuhn LLP
100 – 32160 South Fraser Way
Abbotsford, BC V2T 1W5

Attention: Jonathan Maryniuk
Email: jmaryniuk@kuhnco.net

(b) To the Lessor at:

THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER

Attention: Corporate Officer
750 17th Street
West Vancouver, BC V7V 3T3

Attention: Mark Panneton
E-mail: mpanneton@westvancouver.ca and corporateofficer@westvancouver.ca

with a copy to the Lessor's Solicitors at:

LIDSTONE & COMPANY LAW CORPORATION
1300 – 128 Pender Street West
Vancouver, BC V6B 1R8

Attention: Don Lidstone
Email: lidstone@lidstone.ca

or to such other address or email as a party may advise the other by written notice hereunder. Any notice addressed and provided as aforesaid will be deemed to have been given on the day of delivery or transmission by email if a Business Day, and if not a Business Day, then on the next Business Day or if mailed, on the third Business Day following the posting thereof. Notices will not be mailed during the

currency of a postal strike, dispute or slowdown, and during such time, notice will only be effective if emailed or transmitted (without a failure notice) or if delivered.

ARTICLE 27

CONDITION OF LANDS

27.1 Condition of Lands

The Lessee hereby acknowledges and agrees that (except as expressly provided for herein or otherwise agreed between the Lessee and the District):

- (a) the Lessee is acquiring the Lands on an “as is and where is” basis with no representations or warranties as to its condition, environmentally, geotechnical or otherwise, or its suitability for the Lessee’s purposes;
- (b) the Lessee hereby waives any requirement for the Lessor to provide the Lessee with a site profile under the *Environmental Management Act* (British Columbia);
- (c) the Lessee is acquiring the Lands and entering into this Lease relying on its own inspections and not representations, warranties or covenants of the Lessor;
- (d) there are no representations, warranties, guarantees, agreements or conditions, whether direct or collateral, or express or implied, which induced the Lessee to enter into this Lease or on which reliance is placed by the Lessee, or which affects this Lease or the Lands, other than as specifically set out in this Lease or any other agreement entered into between the Lessee and the Lessor or the District;
- (e) the Lessee is relying on its own due diligence in reviewing any documents, general information or other materials provided by the Lessor to the Lessee or made available to the public (collectively, the “**Deliverables**”) and that the Deliverables are not intended to constitute a representation or warranty as to any of the contents thereof on the part of the Lessor or the Lands; and
- (f) the Lessor neither makes or gives any representation, warranty or covenant with respect to the environmental condition of the Lands including, without limitation, any representation, warranty or covenant as to whether or not the Lands contain any waste, hazardous or toxic wastes or other environmentally sensitive or unwanted substances of any nature whatsoever.

ARTICLE 28 MISCELLANEOUS

28.1 Statements by Lessor

The Lessor and the Lessee agree that at any time and from time to time upon not less than 30 days prior request by the other party, each will execute, acknowledge and deliver to the other a statement in writing certifying:

- (a) that this Lease is unmodified and in full force and effect or if there have been modifications that the same are in full force and effect as modified and identifying the modifications;
- (b) the dates to which any Rent and other charges have been paid and the request must specify the charges in respect of which such information is required; and
- (c) that, so far as the maker of the statement knows, without having conducted any searches or made any particular enquiries, the party who requests the statement is not in default under any provisions of this Lease, or, if in default, the particulars thereof.

28.2 The certification will be provided by the Lessor on the following conditions:

- (a) that neither the Lessor nor the party signing on behalf of the Lessor be liable for any damage or expense should for any reason, including, without limitation, negligence, the information provided be inaccurate, incomplete or misleading; and
- (b) that should any or all of the information be inaccurate, incomplete or misleading, for any reason, including, without limitation, negligence, the Lessor will, as against any person or corporation who may rely on the contents of this certification statement, be able to assert and enforce its full rights in strict accordance with this Lease as if this certification statement had not been signed on behalf of the Lessor and as if any or all persons and corporations who may rely on the contents of the certification statement had not relied on the contents of the certification statement.

28.3 Lease Registration

The Lessee must register this Lease in the LTO and all costs and expenses in connection with the registration shall be borne by the Lessee. The Lessor shall, if requested by the Lessee, cooperate with the Lessee with respect to the registration of this Lease. The Lessee acknowledges and agrees that upon the request of the Lessor at the expiration or earlier termination of this Lease, the Lessee will discharge such registration at its sole cost and expense.

28.4 Time

Time is of the essence of this Lease, save as herein otherwise provided.

28.5 Amendments

This Lease may not be modified or amended except by an instrument in writing of equal formality herewith executed by the Lessor and the Lessee or by the successors or assigns of the Lessor and the successors or assigns (or permitted assigns, as applicable) of the Lessee.

28.6 Enurement

It is further agreed and declared by the Lessor and the Lessee that these presents extend to, are binding on and enure to the benefit of the Lessor and the Lessee and the successors and assigns of the Lessor and the successors or assigns (or permitted assigns, as applicable) of the Lessee.

28.7 Approval or Consent

A reference in this Lease to approval or consent of the Lessor shall be a reference to approval by the Lessor's Chief Administrative Officer or their designate. Nothing in this section precludes the Chief Administrative Officer from referring an approval or consent to the Lessor's Council.

28.8 Powers Preserved

Except as expressly set out in this Lease, nothing contained or implied in this Lease shall fetter in any way the discretion of the District of West Vancouver or the Council of the District of West Vancouver. Further, nothing contained or implied in this Lease shall derogate from the obligations of the Lessee under any other agreement with the District of West Vancouver or, if the District of West Vancouver so elects, prejudice or affect the District of West Vancouver's rights, powers duties or obligations in the exercise of its functions pursuant to the *Community Charter* or the *Local Government Act*, as amended or replaced from time to time, or act to fetter or otherwise affect the District of West Vancouver's discretion, and the rights, powers, duties and obligations of the District of West Vancouver under all public and private statutes, by-laws, orders and regulations, which may be, if the District of West Vancouver so elects, as fully and effectively exercised in relation to the Project or Parcel A as if this Lease had not been executed and delivered by the Lessee and the District of West Vancouver.

IN WITNESS WHEREOF the Lessor and the Lessee have hereunto caused this Lease to be executed on the Form C and Form D respectively to which this Lease is attached by the signatures of their respective proper officers duly authorized for such purpose.

SCHEDULE A

1. The encumbrances, rights, and exceptions, restrictions, provisos, conditions and reservations referred to in Section 23(2) of the *Land Title Act*.
2. Applicable development/subdivision charges relating to the Project and/or the Lands.
3. A cross access agreement among the Lessor, in its capacity as a governmental authority, the Lessor, as the fee simple owner of the Lands and the Lessor, as the fee simple owner of Parcel A and for the shared use by the owners of Parcel A and Parcel B of a single underground parking ramp and other building elements that arise from shared use of portions of the ground level landscaping and a section 219 Land Title Act covenant in favour of the Lessor restricting the use of the Lands, except in accordance with such cross access agreement.
4. Housing agreement referred to in section 5.1
5. The following legal notations, liens, charges and encumbrances registered against the Lands:
 - a. Legal Notations:
 - i. Nil
 - b. Charges, Liens and Interests
 - i. A section 219 *Land Title Act* covenant between the Lessor as the fee simple owner of Parcel A and the Corporation of the District of West Vancouver in its capacity as a local government, in favour of the Corporation of the District of West Vancouver restricting the use of Parcel A except in accordance with the terms and conditions contained in this no build covenant.

SCHEDULE B
MORTGAGEE AGREEMENT

Under Section 17.4 of Ground Lease

THIS AGREEMENT made the • day of •, 20•.

BETWEEN:

•

(the “**Lessee**”)

AND:

•

(the “**Mortgagee**”)

AND:

THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER

(the “**Lessor**”)

GIVEN THAT

- A. By a ground lease dated for reference the • day of •, • (the “**Ground Lease**”), and registered in the LTO under registration number _____, on the terms and conditions therein contained, the Lessor, as lessor, did demise and lease to the Lessee, as lessee, those lands in the District of West Vancouver, in the Province of British Columbia, more particularly known and described as:

Parcel Identifier:

(the “**Lands**”);

- B. By an indenture of mortgage (hereinafter called the “**Mortgage**”) dated for reference •, 20• between the Lessee as mortgagor, and the Mortgagee, and registered in the LTO under no. _____ the Lessee did sublease by way of mortgage unto the Mortgagee the Lessee’s right, title and interest in the Lands under the Ground Lease to secure a principal amount in an unspecified amount plus interest and costs, all as more particularly set forth therein; and
- C. The Mortgagee is a “Mortgagee”, as defined under Section 1.1 of the Ground Lease and desires to have every opportunity to protect its interest and security.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and of the sum of \$1.00 now paid by each of the Mortgagee, the Lessor and the Lessee to the others (receipt of which is hereby acknowledged by each of the parties):

1. The Lessor covenants and agrees with the Mortgagee that the Lessor:
 - (a) will not accept a surrender of the Ground Lease, in whole or in part, without the prior written consent of the Mortgagee, not to be unreasonably withheld;
 - (b) will not enter into any agreement for the cancellation, surrender or subordination of the Ground Lease, in whole or in part, without the prior written consent of the Mortgagee, not to be unreasonably withheld;
 - (c) will not agree to any modification or amendment to the Ground Lease:
 - (i) which may adversely affect the Mortgagee's security, without the prior written consent of the Mortgagee, such consent not to be unreasonably withheld (provided that if the Mortgagee has neither provided its consent nor advised the Lessor in writing within 45 days of receipt of a request from the Lessor for its consent, that it will not provide its consent, the Mortgagee will be deemed to have consented to the modification or amendment), or
 - (ii) which does not adversely affect the Mortgagee's security without giving the Mortgagee seven days' prior written notice, and
 - (d) has been furnished with a copy of and has consented to the granting of the Mortgage.
2. The Lessee acknowledges and represents to the Mortgagee that it has entered into possession of the Lands under the terms of the Ground Lease and the housing agreement referred to in section 5.1 of the Ground Lease.
3. The Lessor and the Lessee hereby mutually covenant and agree with the Mortgagee that any sale or assignment of the leasehold estate contemplated under Section 17.1 of the Ground Lease, may be made to any purchaser or assignee notwithstanding anything to the contrary in the Ground Lease if such sale or assignment is court approved or otherwise made in connection with the enforcement of the Mortgagee's security.
4. The Lessor covenants and agrees to grant and provide to the Mortgagee all rights, assurance and notice afforded under the terms of the Ground Lease to a "Mortgagee", as defined in the Ground Lease, and, without limiting the generality of the foregoing, all remedies afforded a "Mortgagee" under the Ground Lease.
5. The Lessor and the Lessee mutually covenant and agree, at any time and from time to time, upon not less than 30 days prior request by the Mortgagee, to execute, acknowledge and deliver to the Mortgagee a statement in writing certifying:
 - (a) that the Ground Lease is unmodified and in full force and effect or if there have been modifications that same is in full force and effect as modified and identifying the modifications;
 - (b) that all Basic Rent has been fully paid and the dates to which any other forms of Rent and other charges payable to the Lessor under the Ground Lease have been paid, provided that the request specifies with particulars the charges in respect of which such information is required, and

- (c) that to the best knowledge of the maker of the statement, without having conducted any searches or made any particular enquiries, the other party to the Ground Lease is not in default under the provisions of the Ground Lease, or if in default, the particulars thereof.
6. If the Mortgagee acquires title to the Lessee's interest, as lessee, in the Lands, the Mortgagee covenants and agrees to attorn as tenant under the Ground Lease and housing agreement referred to in section 5.1 of the Ground Lease under the terms thereof for so long as it remains tenant and has not assigned the balance of the Term, as defined in Section 1.1 of the Ground Lease and the housing agreement, and hereby acknowledges that it has had the opportunity to read the Ground Lease and upon attorning as tenant under the Ground Lease shall adopt the covenants and agreements of the Ground Lease and the housing agreement on the part of the Lessee to be performed and observed as though such provisions were incorporated in and formed a part of this Agreement; provided that the provisions of this Section 6 shall not limit or affect the Lessor's rights to re-enter, terminate or forfeit the Ground Lease if the Mortgagee fails to comply with the requirements of Section 17.2 of the Ground Lease. If the Mortgagee complies with the requirements of this Section 6 and Section 17.2 of the Ground Lease, the Mortgagee shall be given and afforded the right, privileges and benefits of the Lessee under the Ground Lease. For the purposes of this clause, the requirements of Section 17.2 of the Ground Lease do not include any requirement that the Mortgagee cure any default or contingency referred to in Article 18 of the Ground Lease.
7. If the Mortgagee is the Government of Canada, or a Crown Corporation of the Government of Canada which does not insure risk, and if the Lessor has given to the Mortgagee notice of a default or contingency or notice of the bankruptcy or insolvency of the Lessee entitling the Lessor to re-enter or terminate or forfeit the Ground Lease, and the Mortgagee commences to cure the default or contingency, then upon the Mortgagee curing the default or contingency and if the Mortgagee attorns as tenant to the Lessor, then during the period that the Mortgagee is the tenant of the Lessor under the Lease, the Mortgagee shall not be under any obligation to take out and keep in force by the Lessee any of the insurance required to be taken out and kept in force by the Lessee under the Ground Lease; provided however that the provisions of this Section shall not relieve the Mortgagee, as tenant, from any of the other covenants, conditions and agreements under the Ground Lease.
8. If the Lessee and the Lessor cannot agree as to any matters regarding the Ground Lease and they decide that the resolution of that matter is to be determined by litigation or arbitration under the arbitration provisions of the Ground Lease, the Mortgagee shall be given adequate notice of such arbitration proceedings and if in the reasonable opinion of the Mortgagee, such proceedings may affect its mortgage security, the Mortgagee shall be given a reasonable opportunity by the Lessee and the Lessor to participate in the arbitration proceedings if the Mortgagee considers such proceedings may affect its mortgage security.
9. If the Mortgagee shall have fully cured any default in the payment of any Rent (as defined in the Ground Lease) or any other amount to be paid by the Lessee under the Ground Lease and shall continue to pay currently such monetary obligations as and when the same fall due then if the Mortgagee is prohibited, by any process or injunction issued by any court by reason of any action by any court having jurisdiction over any proceeding involving the Lessee, from commencing or prosecuting foreclosure or other appropriate proceedings of the nature thereof or from obtaining possession of the Lands, then the time specified in Section 17.2 of the Ground Lease for commencing or prosecuting such foreclosure or other proceedings or for curing defaults other

than payment of Rent (as defined in the Ground Lease) or any other amount required to be paid by the Lessee under the Ground Lease shall be extended for the period of such prohibition or injunction.

10. If the Mortgagee has cured all defaults and contingencies of which the Mortgagee has received notice from the Lessor under Section 17.2 of the Ground Lease, then it shall be entitled to permit the Lessee to continue as tenant of the Lands unless the Mortgagee has acquired the right, title and interest of the Lessee in the Lands under the Ground Lease, in which case the provisions of Section 6 hereof shall apply. For the purposes of this clause, the events contemplated by Article 18 of the Ground Lease shall not constitute a default or contingency.
11. This Agreement shall be deemed to terminate and be of no further force and effect and the obligations, if any, of the Mortgagee under the Lease as tenant shall cease and be of no further force and effect at such time as the Mortgage has been paid in full, has been terminated or released in accordance with the terms and conditions therein contained, or has been released or discharged from the Lands or the Mortgagee has assigned the balance of the Term, as defined in Section 1.1 of the Ground Lease; unless, having obtained an order absolute in foreclosure proceedings against the Lessee, the Mortgagee elects otherwise to continue this Agreement in full force and effect and to be bound as tenant under the Ground Lease and the housing agreement referred to in section 5.1 of the Ground Lease.
12. This Agreement shall enure to the benefit of and shall be binding upon the parties hereto, and their respective successors and assigns.
13. The Lessor covenants and agrees with the Mortgagee and the Lessee not to assign or otherwise dispose of its interest in the Lands or its interest in the Ground Lease or any part thereof without first obtaining from the proposed assignee or person to whom such disposition is to be made an agreement to the same effect as set forth herein, such agreement also to contain a covenant on the part of the proposed assignee or person to whom such disposition is to be made to exact a similar agreement from any subsequent assignee or person to whom such disposition is to be made.
14. This Agreement may be executed in counterparts and will be binding when it has been executed and delivered by all parties.

[Mortgagee agreement signature page follows]

IN WITNESS WHEREOF this Agreement has been executed on the day, month and year first above and written.

• [LESSEE])
)
)
_____)
Authorized Signatory)
)
_____)
Authorized Signatory)

• [MORTGAGEE])
)
_____)
Authorized Signatory)
)
_____)
Authorized Signatory)

THE CORPORATION OF THE DISTRICT OF)
WEST VANCOUVER)
_____)
Authorized Signatory)
_____)
Authorized Signatory)

APPENDIX 3



District of West Vancouver

Housing Agreement Authorization Bylaw No. 5200, 2022 (Kiwanis North Shore Housing Society)

Effective Date: _____, 2022

Housing Agreement Authorization
Bylaw No. 5200, 2022

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District of West Vancouver

Housing Agreement Authorization Bylaw No. 5200, 2022

A bylaw to enter into a housing agreement.

WHEREAS the Council of The Corporation of the District of West Vancouver and Kiwanis North Shore Housing Society are to enter into a housing agreement under section 483 of the *Local Government Act* to restrict the use of the land;

NOW THEREFORE, the Council of The Corporation of the District of West Vancouver enacts as follows:

Part 1 Citation

- 1.1 This bylaw may be cited as Housing Agreement Authorization Bylaw No. 5200, 2022.

Part 2 Severability

- 2.1 If a portion of this bylaw is held invalid by a Court of competent jurisdiction, then the invalid portion must be severed and the remainder of this bylaw is deemed to have been adopted without the severed section, subsection, paragraph, subparagraph, clause or phrase.

Part 3 Housing Agreement

- 3.1 The District of West Vancouver is authorized to enter into a housing agreement under section 483 of the *Local Government Act*, substantially in the form attached to this bylaw as Schedule A, with Kiwanis North Shore Housing Society or its nominee, in respect of the land located at:
- 3.1.1 990 22nd Street, West Vancouver, BC on proposed Parcel A (shown on the plan attached to this bylaw as Schedule B) to be subdivided from the parent parcel legally described as: PID 024-

158-259 Lot 1, District Lot 775 Group 1 New Westminster District
Plan LMP 38133.

- 3.2 The Mayor and Corporate Officer are authorized to execute and deliver the housing agreement.

Schedule

Schedule A – Housing Agreement

Schedule B – Plan of proposed Parcel A

READ A FIRST TIME on , 2022

READ A SECOND TIME on , 2022

READ A THIRD TIME on , 2022

ADOPTED by the Council on , 2022

Mayor

Corporate Officer

Schedule A – Housing Agreement

TERMS OF INSTRUMENT – PART 2

Housing Agreement and Covenant

THIS AGREEMENT is dated for reference as of the last date of execution by a party to this agreement (the “**Reference Date**”),

BETWEEN:

THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER, a
municipal corporation pursuant to the *Local Government Act* and having
its offices at 750 17th Street, West Vancouver BC V7V 3T3

(the “**District**”)

AND:

KIWANIS NORTH SHORE HOUSING SOCIETY INC. NO. S0004376, a
society having its offices at 100 975 21st Street, West Vancouver, BC
V7V 0B5

(“**Kiwanis**”)

WHEREAS:

- A. Kiwanis leases from the District certain lands and premises with the civic address of 990 22nd Street, legally described as _____ (the “**Lands**”), pursuant to a lease dated _____ registered against title to the Lands under No. _____ (the “**Lease**”);
- B. In accordance with the Lease, Kiwanis intends to construct and operate on the Lands one or more buildings containing affordable rental housing units and an adult day services facility, complete with soft and hard landscaping, on-site and off-site servicing, parking and loading (the “**Development**”);
- C. Section 483 of the *Local Government Act*, permits municipalities to enter into a housing agreement with an owner regarding the occupancy of the housing units, including the form of tenure, the availability of units, the administration and the rents;
- D. Section 219 of the *Land Title Act* permits registration of a covenant in favour of a municipality in respect of the use of land or the use of a building on or to be erected on land and that land is or is not to be built on except in accordance with the covenant and that land is not to be subdivided except in accordance with the covenant;
- E. Kiwanis and the District wish to enter into this Agreement, with respect to Kiwanis’ interest under the Lease (the “**Leasehold Interest**”) to require that, with the exception of the Adult Day Care Facility, all Dwellings in the Development be Affordable Rental Units, during the Term. This

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Agreement is a housing agreement under section 483 of the *Local Government Act* and a covenant under section 219 of the *Land Title Act*; and

- F. The District has, by bylaw, authorized the execution of this Agreement and Kiwanis has duly authorized and executed this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of \$10.00 paid by the District to Kiwanis (the receipt of which is acknowledged by Kiwanis) and in consideration of the promises exchanged below, the District and Kiwanis covenant and agree as follows:

1.0 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following words have the following meanings:

- (a) **“Adult Day Care Facility”** means a facility forming part of the Development and intended to provide day care services to eligible program participants;
- (b) **“Affordable Rent”** means rent within the range set out in Schedule A, subject to increases contemplated in this Agreement;
- (c) **“Affordable Rental Unit”** means a Dwelling that is rented to an Eligible Tenant at Affordable Rent;
- (d) **“Agreement”** means this agreement and includes all recitals, instruments, schedules, and amendments thereto;
- (e) **“Building”** means any building or buildings constructed on the Lands. **“Buildings”** means all buildings constructed on the Lands from time to time;
- (f) **“Canadian National Occupancy Standard”** means the Canadian National Occupancy Standard, or an alternate standard used by the Canadian Mortgage and Housing Corporation (CMHC), from time to time, as a measure of crowding, all as amended or replaced from time to time;
- (g) **“Certificate of Occupancy”** means certificate of occupancy issued by the District of West Vancouver pursuant to Building Bylaw 4400, 2004, as amended or replaced from time to time;
- (h) **“Chief Administrative Officer”** means the person appointed from time to time as the Chief Administrative Officer of the District, or their delegate;
- (i) **“CPI”** means the All-Items Consumer Price Index for Vancouver, B.C. published from time to time by Statistics Canada, or its successor in function;
- (j) **“Daily Amount”** means \$100.00 per day as of January 1, 2022 adjusted thereafter by an amount determined by multiplying \$100.00 by the percentage change in the CPI from January 1, 2022 to January 1 of the year that a written notice is delivered to Kiwanis by the District pursuant to section 5.1;

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- (k) **“Development”** has the meaning assigned to that term in Recital B;
- (l) **“Dwelling”** has the same meaning as in the District of West Vancouver Zoning Bylaw No. 4662, 2010, as amended or replaced from time to time. Without limiting the foregoing, at the date of this Agreement, the term “Dwelling” under the Zoning Bylaw means “a building or portion of a building having 2 or more rooms used or intended to be used together for the domestic purposes of one or more persons and including at least one living room, one cooking facility and one bathroom and not rented or available for rent or occupation for periods of less than 30 days”;
- (m) **“Eligible Tenant”** means a Tenant who meets all the qualifications set out in Schedule B;
- (n) **“Existing Tenant”** means a Tenant continuing tenancy of a Dwelling they are renting;
- (o) **“First Occupancy”** means first occupancy for a Building on the Lands permitted by the District of West Vancouver, as evidenced by a Certificate of Occupancy;
- (p) **“Initial Tenant”** means the first New Tenant of a newly constructed Dwelling that has not previously been rented or occupied;
- (q) **“Initial Occupancy Period”** means one calendar year after First Occupancy;
- (r) **“Lands”** has the meaning set out in Recital A;
- (s) **“Lease”** has the meaning set out in Recital A;
- (t) **“Leasehold Interest”** has the meaning set out in Recital E;
- (u) **“Over-housing”** means a situation in which a Tenant is residing in a Dwelling where the number of bedrooms is greater than the number of persons as established under the Canadian National Occupancy Standard; **“Over-housed”** has a corresponding meaning;
- (v) **“Over-housing Charge”** means the amount calculated as follows:
- the difference between rent for the Dwelling that is occupied and the rent for the Dwelling that should be occupied, based on this Agreement. For the purpose of the calculation, the rent for both Dwellings will be based on rents to be imposed on New Tenants. For example, if a Tenant lives in a 3-bedroom Dwelling but should live in a 2-bedroom Dwelling, and the current rent for New Tenants of the Existing Tenant’s 3-bedroom Dwelling is \$700, and the current rent for New Tenants of the 2-bedroom Dwelling being offered to the Existing Tenant is \$500, then the calculation of the Over-housing Charge is as follows: \$700 - \$500 = \$200;
- (w) **“New Tenant”** means a Tenant commencing a new tenancy in a Dwelling;
- (x) **“Permanent Residence”** means that the Affordable Rental Unit is used as the usual, main, regular, habitual, principal residence, abode or home of the Eligible Tenant;

- (y) **"Pet"** has the same meaning as in the District of West Vancouver Animal Control and License Bylaw, No. 4545, 2008, as amended or replaced from time to time. Without limiting the foregoing, at the date of this Agreement, the term "Pet" under the Animal Control and License Bylaw means "a domesticated dog, cat, rabbit, ferret, hamster, guinea pig, gerbil, or bird, and includes reptiles and other animals if they are kept inside a dwelling unit, but does not include livestock, poultry, or wildlife as defined by the *Wildlife Act*";
- (z) **"Records"** means all documentation relating to the use and occupation of the Lands and Buildings including tenancy agreements, information confirming Eligible Tenant status, books of account and receipts;
- (aa) **"Subdivide"** means to divide, apportion, consolidate or subdivide the Lands, the Building, or the ownership or right to possession or occupation of the Lands into two or more lots, strata lots, parcels, parts, portions or shares, whether by plan, descriptive words or otherwise, under the *Land Title Act*, the *Strata Property Act*, or otherwise, and includes the creation, conversion, organization or development of "cooperative interests" or "shared interests in land" as defined in the *Real Estate Development Marketing Act*; **"Subdivision"** has a corresponding meaning;
- (bb) **"Tenant"** means one or more individuals that occupy or propose to occupy a Dwelling pursuant to a Tenancy Agreement;
- (cc) **"Tenancy Agreement"** means a tenancy agreement pursuant to the *Residential Tenancy Act* that is regulated by the *Residential Tenancy Act*;
- (dd) **"Term"** has the meaning set out in section 2.1; and
- (ee) **"Zoning Bylaw"** means the District of West Vancouver Zoning Bylaw No. 4662, 2010, as amended by Amendment Bylaw No. 5068, 2020, and as further amended from time to time.

1.2 Interpretation

In this Agreement:

- (a) words importing the singular number include the plural and vice versa and words importing the neuter gender include the masculine and the feminine genders;
- (b) the division of this Agreement into articles and sections and the insertion of headings are for convenience only and will not affect the construction or the interpretation of this Agreement;
- (c) references to any article, section or schedule will, unless the context otherwise requires, mean that article, section or schedule of this Agreement;
- (d) every reference to each party is deemed to include the heirs, executors, administrators, personal representatives, successors, servants, employees, agents, contractors, officers, licensees and invitees of such party, wherever the context so requires or allows;

- (e) the words “include” and “including” are to be construed as meaning “include without limitation” and “including without limitation”;
- (f) all payments to be made will be deemed to be payments in lawful currency of Canada;
- (g) reference to “business day” means all days other than Saturday, Sunday and statutory holidays in the Province of British Columbia;
- (h) reference to “party” and “parties” means the one or more parties to this Agreement, as the context demands;
- (i) reference to a whole, for example, the “Lands” and the “Development”, includes reference to a portion thereof; and
- (j) unless expressly stated otherwise, all references to enactments refer to enactments of the Province of British Columbia, as amended or replaced from time to time. All reference to bylaws and policies refers to the bylaws and policies of the District, as amended or replaced from time to time.

1.3 Acknowledgements

Kiwanis acknowledges and agrees that:

- (a) except as expressly provided, nothing in this Agreement will relieve Kiwanis from any obligation or requirement arising under any applicable statute, bylaw or regulation in respect of the use, Subdivision and development of the Lands;
- (b) nothing contained or implied in this Agreement will prejudice or affect the District’s rights, powers, duties or obligations in the exercise of its functions pursuant to the *Local Government Act*, the *Community Charter* or other statutes, bylaws, orders and regulations; and
- (c) all obligations of Kiwanis under this Agreement will be at the cost of Kiwanis.

1.4 Schedules

Schedule A, Schedule B and Schedule C are attached to and form part of this Agreement.

2.0 TERM

2.1 Term

This Agreement will commence on the Reference Date and will continue until the Lease has expired or is terminated (the “Term”).

3.0 SECTION 219 COVENANT

3.1 Grant

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Kiwanis, as the holder of the Leasehold Interest, hereby covenants and agrees with the District, as a covenant in favour of the District pursuant to section 219 of the *Land Title Act*, it being the intention and agreement of Kiwanis that the provisions in this Agreement be annexed to, and run with and be a charge upon the Leasehold Interest, that:

- (a) the Lands will be built on in the manner that includes the following, in the location and configuration satisfactory to the District, as more particularly detailed through the development permit process:

(1) the Adult Day Care Facility; and

(2) Affordable Rental Units in the following unit mix and size:

Unit Type	% Mix (which % mix may vary up or down by no more than 2%)	Number of Units (which number of units may vary up or down by no more than 2 units)	Average Unit Size (Square Feet) (which average size may vary up or down by no more than 3%)
Studio	13%	20	415.8
1-Bedroom	35%	55	603.1
2-Bedroom	37%	58	803.7
3-Bedroom	15%	23	1020.4
TOTAL	100%	156	N/A

- (b) all parking spaces and loading spaces constructed on the Lands will be used for the Affordable Rental Units and the Adult Day Care Facility, in the manner satisfactory to the District, as more particularly detailed through the development permit process;
- (c) the Lands and the Buildings will be used only in accordance with this Agreement;
- (d) except to the extent contained within the Adult Day Care Facility, all Dwellings constructed on the Lands will be used only as Affordable Rental Units; and
- (e) the Lands, the Leasehold Interest, and the Buildings will not be Subdivided in any manner without the prior written consent of the District, acting reasonably. As a condition of Subdivision, the District may require Kiwanis to register against the Leasehold Interest one or more covenants pursuant to section 219 of the *Land Title Act* that limits separate sale or sublease of all or some of the Affordable Rental Units.

3.2 Indemnity

As an indemnity pursuant to section 219(6) of the *Land Title Act*, and an integral part of the covenant contained in section 3.1, Kiwanis will indemnify and save harmless the District and each of its elected officials, officers, directors, and agents, and their respective heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, actions, loss, damage, costs and liabilities, which all or any of them will or may be liable for or suffer or incur or be put to by reason of or arising out of one or more of the following:

- (a) any act or omission of Kiwanis, its officers, directors, agents, contractors, or other persons for whom at law Kiwanis is responsible, relating to this Agreement;
- (b) construction, maintenance, operation, management or financing of the Lands, the Development, the Buildings, the Adult Day Care Facility, or any Affordable Rental Unit by Kiwanis, its officers, directors, agents, contractors, or other persons for whom at law Kiwanis is responsible;
- (c) any breach of this Agreement by Kiwanis, its officers, directors, agents, contractors, or other persons for whom at law Kiwanis is responsible; and
- (d) the exercise by the District of any of its rights under this Agreement,

without any exceptions.

3.3 Release

As a release pursuant to section 219(6) of the *Land Title Act*, and an integral part of the covenant contained in section 3.1, Kiwanis releases and forever discharges the District and each of its elected officials, officers, directors, and agents, and its and their respective heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, damages, actions, or causes of action by reason of or arising out of one or more of the following:

- (a) any act or omission of Kiwanis, its officers, directors, agents, contractors, or other persons for whom at law Kiwanis is responsible, relating to this Agreement;
- (b) construction, maintenance, operation, management or financing of the Lands, the Development, the Buildings, the Adult Day Care Facility, or any Affordable Rental Unit by Kiwanis, its officers, directors, agents, contractors, or other persons for whom at law Kiwanis is responsible;
- (c) any breach of this Agreement by Kiwanis, its officers, directors, agents, contractors, or other persons for whom at law Kiwanis is responsible; and
- (d) the exercise by the District of any of its rights under this Agreement,

without any exceptions.

3.4 Impact on Market Value

Kiwanis acknowledges and agrees that no compensation is payable, and Kiwanis is not entitled to and will not claim any compensation from the District, for any decrease in the market value of the Lands, or the Leasehold Interest, which at any time results directly or indirectly from the existence, registration, or operation of this Agreement.

Release and Indemnity Survival

The release and indemnity in sections 3.2, 3.3 and 3.4 will survive the termination or expiration of this Agreement, and the release of this Agreement from title to the Lands.

4.0 USE AND OCCUPANCY OF AFFORDABLE RENTAL UNITS

4.1 Rent and Tenure

General

(a) Kiwanis will not lease, rent, license or permit occupancy of an Affordable Rental Unit except as follows:

- (1) to an Eligible Tenant;
- (2) at Affordable Rent;
- (3) as a Permanent Residence; and
- (4) pursuant to a Tenancy Agreement.

Number of occupants

(b) Kiwanis will ensure that the number of individuals who permanently reside in an Affordable Rental Unit will conform to the suitable minimum and maximum number of occupants pursuant to the Canadian National Occupancy Standard in effect from time to time, as necessary to avoid overcrowding and Over-housing. For clarity, as of the date of this Agreement, the Canadian National Occupancy Standard assesses the bedroom requirements of a household based on the following criteria:

- (1) there should be no more than 2 and no less than 1 persons per bedroom;
- (2) children less than 5 years of age of different sexes may reasonably share a bedroom;
- (3) children 5 years of age or older of opposite sex should have separate bedrooms;
- (4) children less than 18 years of age and of the same sex may reasonably share a bedroom;
- (5) single household members 18 years or older should have a separate bedroom, as should parents or couples; and
- (6) a household of one individual may occupy a bachelor unit (i.e., a unit with no bedroom).

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- (c) The Tenancy Agreement for an Affordable Rental Unit will identify all occupants of the Affordable Rental Unit and will stipulate that anyone not identified in the Tenancy Agreement will be prohibited from residing in the Affordable Rental Unit for more than 30 consecutive days or more than 45 days total in any calendar year.

Subleasing/assignment not permitting

- (d) Kiwanis will not permit the Affordable Rental Unit to be subleased, or the Tenancy Agreement for an Affordable Rental Unit to be assigned.

Determining and confirming eligibility and suitability

- (e) To determine eligibility of a prospective Tenant of an Affordable Rental Unit, Kiwanis may reasonably rely on information provided by the prospective Tenant, provided that Kiwanis will require all reasonable information necessary to confirm eligibility (including without being exhaustive income tax records, employment records, school records, residence and/or employment history, and other). Unless Kiwanis' reliance is unreasonable, negligent or in wilful misconduct, Kiwanis will have no liability nor will have breached this Agreement if the prospective Tenant intentionally or unintentionally provides inaccurate information.
- (f) Kiwanis will collect the following information on an annual basis or as otherwise requested by the District to ensure compliance with eligibility requirements of the Affordable Rental Unit as set out in Schedule B:
 - (1) gross annual income from all sources (including employment, disability, retirement, investment, and other) of all members of the Tenant's household who are 18 years of age and over and who reside in the Affordable Rental Unit;
 - (2) a statement of asset ownership; and
 - (3) number of occupants of the Affordable Rental Unit.
- (g) Subject to the requirements of the *Residential Tenancy Act*, Kiwanis will ensure that each Tenancy Agreement includes the following provision:

"By entering into this Tenancy Agreement, the Tenant hereby consents to Kiwanis collecting, retaining and disclosing to the District of West Vancouver personal information required to confirm the Tenant's eligibility to reside in the rental unit, including the following personal information:

- (1) a statement of gross annual income from all sources (including employment, disability, retirement, investment, and other) of all members of the Tenant's household who are 18 years of age and over and who reside in the Affordable Rental Unit;
- (2) a statement of asset ownership;
- (3) details of connection to the community of the District of West Vancouver (including employment, school enrollment, past residence); and

- (4) number of occupants of the Affordable Rental Unit.

The foregoing personal information may be collected at the beginning of the tenancy and on an annual basis and may be used to confirm the Tenant's eligibility to reside in the rental unit, and to confirm Kiwanis' compliance with the District of West Vancouver affordable housing eligibility requirements."

Terminating if cease to be eligible, or if Dwelling has too many occupants

- (h) Subject to any contrary provisions in the *Residential Tenancy Act*, Kiwanis will include in the Tenancy Agreement a clause entitling Kiwanis to terminate the Tenancy Agreement if:
 - (1) an Affordable Rental Unit is occupied by a person or persons other than an Eligible Tenant;
 - (2) the Tenant subleases the Affordable Rental Unit or assigns the Tenancy Agreement in whole or in part;
 - (3) the Affordable Rental Unit is occupied by more than the number of people than acceptable under the Canadian National Occupancy Standard; or
 - (4) the Affordable Rental Unit remains vacant for four (4) consecutive months or longer, notwithstanding the timely payment of rent.

Over-housing relocation and Over-housing Charge

- (i) Subject to any contrary provisions of the *Residential Tenancy Act*, if an Affordable Housing Unit becomes occupied by less than the number of people than acceptable under the Canadian National Occupancy Standard (also known as "Over-housing"), the following will apply:
 - (1) if a Dwelling of the correct size is available, Kiwanis will forthwith, in writing, offer that Dwelling to the Tenant and the Tenant will have the maximum of 30 days from the date of the offer to accept or to refuse the offered Dwelling;
 - (2) a Tenant that accepts the offered Dwelling will not be charged any additional amount from the time when the Tenant is Over-housed until the time the Tenant moves into the suitable Dwelling offered;
 - (3) a Tenant that refuses the offer of a suitable Dwelling will have a period of six (6) consecutive months, starting from the date of the offer, with no Over-housing Charge. If the Tenant is still living in the Dwelling after this period, the Over-housing Charge may be levied on the Tenant, in addition to the rent;
 - (4) if a Dwelling of the correct size is not available, the Tenant may continue to occupy their rented Dwelling, and no Over-housing Charge will be applied until such time that:
 - (i) a Dwelling of correct size is available and is offered to the Tenant, in which case section 4.1(i)(1) will govern; and

- (ii) the Tenant has refused the offer of the suitable Dwelling, in which case section 4.1(i)(3) will govern;
- (5) if Kiwanis has no Dwellings that meet the Canadian National Occupancy Standard, the Dwelling of the closest size will be considered the one that is suitable for the purpose of this section 4.1(i);
- (6) to avoid frequent moving expenses, a Tenant that accepts a housing offer that does not meet the Canadian National Occupancy Standard may refuse a new, more adequate housing offer submitted by Kiwanis within the following twenty-four (24) consecutive months without having to pay the Over-housing Charge; and
- (7) a Tenant will be fully responsible for all relocation and moving expenses.
- (j) If there is more than one Tenant that is in a situation of Over-housing, Kiwanis will offer a Dwelling of the correct size when it becomes available to Tenants in order of longest tenure.

Pets

- (k) Kiwanis will not prohibit Tenants from having Pets in an Affordable Rental Unit, subject to all applicable provincial, federal and municipal laws and bylaws. Kiwanis may make reasonable rules and regulations with respect to security deposit requirements, size and number of Pets.

Age

- (l) Kiwanis will not impose age-based restrictions on Tenants of Affordable Rental Units.

Payments additional to rent

- (m) Kiwanis will not require Tenants of the Affordable Rental Units to pay any of the following:
 - (1) extra fees or charges for use of common property, limited common property or other common property, facilities or amenities;
 - (2) extra fees or charges for use of sanitary sewer, storm sewer or water;
 - (3) property taxes or similar taxes,provided that Kiwanis may charge the following in addition to the Affordable Rent:
 - (4) providing cable television, telephone, other telecommunications, or electricity fees;
 - (5) electricity fees associated with electrical vehicle charging;
 - (6) security and pet deposit and fees for lockers, parking stalls, key and fob replacements and the use of common rooms, amenity rooms, or similar facilities, if any; and
 - (7) if applicable, the Over-housing Charge.

Use of common amenities

- (n) Kiwanis will ensure that occupants of Affordable Rental Units in the Development will have access to and use of all common indoor and outdoor facilities and amenities located in the Development from time to time, except for access to and use of the Adult Day Care Facility.
- (o) Kiwanis will ensure that all occupants of Affordable Rental Units will have access to and use of loading facilities allocated for the use of the Affordable Rental Units in accordance with the Zoning Bylaw, development permit or building permit issued for the Development.

4.2 Starting Affordable Rent and Affordable Rent Increases

The District and Kiwanis acknowledge that the Affordable Rent set out in Schedule A constitutes Affordable Rent as of January 1, 2021. Acknowledging that Occupancy of the Development will commence after the rates in Schedule A have been established, the parties agree that the following will apply to establishing starting Affordable Rent for New Tenants (including Initial Tenants) and increasing Affordable Rent for Existing Tenants, during the Term:

- (a) for Initial Tenants commencing tenancy within the Initial Occupancy Period: the starting Affordable Rent may be increased from the rental rates set out in Schedule A by the maximum amount permitted by the *Residential Tenancy Act*, as if the Affordable Rental Unit was first rented out on January 1, 2021. For example, if the Initial Tenant moves in between January 1, 2023 and December 31, 2023, rental rates in Schedule A may be increased on January 1, 2022 (in accordance with rate of increase in effect on that date), and on January 1, 2023 (in accordance with rate of increase in effect on that date). In this example, the starting Affordable Rent will be: [Schedule A Affordable Rent] + [January 1, 2022 increase] + [January 1, 2023 increase]. For greater certainty, this section 4.2(a) only applies to Initial Tenants whose tenancy commences within the Initial Occupancy Period and does not apply to: (i) Initial Tenants commencing Tenancy after Initial Occupancy Period has expired; and (ii) New Tenants, but not Initial Tenants, commencing tenancy within the Initial Occupancy Period;
- (b) for Initial Tenants commencing tenancy after the Initial Occupancy Period has expired, and for New Tenants commencing tenancy during or after the Initial Occupancy Period: the starting Affordable Rent will be established as follows:
 - (1) every three (3) years beginning 2025, as early as reasonably possible in the beginning of the calendar year, Kiwanis will engage an independent third-party appraiser to establish market rent for different unit types (comparable to the unit types in the Development) in effect at the time in the District of West Vancouver (the “**Market Rent**”). The starting Affordable Rent for New Tenants (including Initial Tenants) commencing tenancy in the calendar year of the appraisal will equal the percentage of the Market Rent as set out in the applicable column in Schedule A titled “% of Market Rent Rate” for each unit type;
 - (2) during years when there has been no update to Market Rent pursuant to 4.2(b)(1), the starting Affordable Rent for New Tenants (including Initial Tenants) will be established by applying the percentage rent as set out in Schedule A as indicated in the applicable column titled “% of Market Rent Rate” for each unit types using the most recent Market

Rent appraisal, provided that this rent may be increased by the maximum amount permitted by the *Residential Tenancy Act*, from the date of the most recent Market Rent appraisal to the time the tenancy commences;

- (3) if the District, acting reasonably, determines that Market Rent has decreased by more than 10% from the most recent Market Rent appraisal, Kiwanis shall obtain an appraisal for Market Rent within 60 days of the District's written request. In this instance, the starting Affordable Rent for New Tenants (including Initial Tenants) will be calculated in accordance with section 4.2(b)(1), based on Market Rent appraisal; and
- (4) with respect to section 4.2(b)(1) and section 4.2(b)(2):
 - i. a reduction in the Market Rent will result in a corresponding reduction in the starting Affordable Rent for New Tenants (including Initial Tenants); and
 - ii. an increase in the Market Rent may result in an increase in the starting Affordable Rent for New Tenants (including Initial Tenants); and
- (c) for Existing Tenants: Affordable Rent may be increased as permitted from time to time by the *Residential Tenancy Act*, irrespective of the basis on which the starting Affordable Rent was established.

4.3 Operation and Management

- (a) Kiwanis will be fully responsible for complying with all applicable laws and regulations, including the *Residential Tenancy Act*.
- (b) Kiwanis will be fully responsible for the management and administration of the Affordable Rental Units, and all associated costs.
- (c) Kiwanis will furnish good and efficient management and operation of the Development, the Buildings and the Affordable Rental Units and will permit representatives of the District to inspect the Development, the Buildings and the Affordable Rental Units at any reasonable time, subject to the notice provisions in the *Residential Tenancy Act*.
- (d) Kiwanis will maintain the Development (including soft and hard landscaping, servicing, parking and loading), the Buildings and the Affordable Rental Units in a satisfactory state of repair and fit for habitation and will comply with all laws, including health and safety standards applicable to the Lands.
- (e) Kiwanis will not assign or delegate management and operation of the Affordable Rental Units to any entity, except with the prior written consent of the District, acting reasonably. When considering whether to provide consent, the District may consider (without being exhaustive) whether the proposed entity is a society or a non-profit organization experienced in providing affordable housing. As an exception to the foregoing, Kiwanis may retain contractors to assist with repair, facility maintenance, janitorial services, and similar activities, on the Lands, provided

that Kiwanis will remain primarily responsible for the operation and management of the Affordable Rental Units.

4.4 District Inquiries and Inspections

- (a) On or before December 31 of every calendar year during the Term, and otherwise at the request of the District, acting reasonably, Kiwanis will deliver to the District:
 - (1) a statutory declaration in the form attached as Schedule C;
 - (2) as applicable, the Market Rent appraisal report contemplated in section 4.2(b)(1) or in section 4.2(b)(3);
 - (3) such Records as the District may reasonably require confirming that a Tenant of an Affordable Rental Unit is an Eligible Tenant under this Agreement; and
 - (4) such other information as may be reasonably requested by the District from time to time to confirm Kiwanis' compliance with this Agreement.
- (b) Kiwanis hereby irrevocably authorizes the District to make such inquiries as the District reasonably considers necessary in order to confirm Kiwanis is complying with this Agreement.
- (c) Kiwanis will retain all Records that pertain to its obligations under this Agreement for not less than seven (7) years following the date of receipt or production of the Records.
- (d) The District will have the right to inspect the Records including the right to enter any premises used by Kiwanis to keep or store the Records at any time after the delivery of notice to Kiwanis and will have the immediate right to make extracts from and take copies of the Records.

4.5 District's Administration

Unless otherwise stated from time to time in a District bylaw, this Agreement will be administered for the District by the Chief Administrative Officer. To that effect:

- (a) all notices addressed to the District pursuant to this Agreement will be addressed to the Chief Administrative Officer and delivered in accordance with section 6.2(h);
- (b) all reports, declarations, and other deliverables that Kiwanis is obligated to deliver or submit to the District under this Agreement will be addressed and delivered to the Chief Administrative Officer;
- (c) except in the context of Subdivision, development permit, building permit, or occupancy approval (in which case ordinary District process will govern) all approvals, consents, and expressions of District's satisfaction, or refusal thereof, as applicable, pursuant to the Agreement will be delivered to Kiwanis by the Chief Administrative Officer; and
- (d) all determinations of the District contemplated in this Agreement (including pursuant to section 4.2) will be delivered to Kiwanis by the Chief Administrative Officer.

Nothing in this section precludes the Chief Administrative Officer from referring a matter, approval, consent, or determination to the District's Council.

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990 22nd Street
Housing Agreement and Covenant
Affordable Rental Housing

5.0 DEFAULT AND REMEDIES

5.1 Notice

- (a) In the event of a default under this Agreement, the District may give to Kiwanis a written notice of default (the “**Notice**”) requiring Kiwanis to cure a default under this Agreement. The Notice must specify the nature of the default.
- (b) Kiwanis will cure the default:
 - (1) within 30 days of receipt of the Notice; or
 - (2) within such longer period as may reasonably be required to cure such default, provided that Kiwanis has advised the District in writing of the time reasonably required to cure the default and is diligently pursuing same.
- (c) In the event of a real or a reasonable perceived emergency, no Notice is required, and Kiwanis will immediately cure the default upon being advised verbally or in writing by the District.

5.2 Daily Amount

If Kiwanis fails to correct a default as contemplated in section 5.1, Kiwanis will pay to the District, as a rent charge pursuant to section 5.3, in respect to each incidence of default, within 30 days of receiving a written request by the District, the Daily Amount for every day that the default continues. The Daily Amount will be increased on January 1 of each year by an amount calculated by multiplying the Daily Amount as of the previous January 1 by the percentage increase in the CPI during the immediately preceding calendar year. The Daily Amount is due and payable immediately upon receipt by Kiwanis of an invoice from the District for the same. This section is without prejudice to any other remedy available to the District under this Agreement and at law or in equity.

5.3 Rent Charge

Kiwanis hereby grants to the District, with respect to the Leasehold Interest, a rent charge under section 5.2 and section 5.3 of this Agreement and under Section 219 of the *Land Title Act*, and at common law, securing payment by Kiwanis to the District of any amount payable by Kiwanis pursuant to this Agreement. Kiwanis agrees that the District, at its option, may enforce payment of such outstanding amount in a court of competent jurisdiction as a contract debt, by an action for and order for sale, by proceedings for the appointment of a receiver, or in any other method available to the District at law or in equity.

5.4 Damages Inadequate

Notwithstanding section 5.2 and section 5.3, Kiwanis acknowledges and agrees that in case of a breach of this Agreement which is not fully remediable by the mere payment of money and promptly so remedied, the harm sustained by the District and to the public interest will be irreparable and not susceptible of adequate monetary compensation. The District may, in its discretion, seek any other remedy that may be available to the District at law or in equity.

5.5 No Remedy is Exclusive

No remedy under this Agreement is deemed to be exclusive but will, where possible, be cumulative with all other remedies available under this Agreement, at law or in equity.

6.0 GENERAL

6.1 Registration

Kiwanis acknowledges and agrees that:

- (a) The covenants and agreements on the part of Kiwanis in this Agreement have been made by Kiwanis as contractual obligations as well as being made pursuant to section 483 of the Local Government Act and as a covenant pursuant to section 219 of the Land Title Act;
- (b) Kiwanis will cause the registration of the section 219 covenant contained in this Agreement against the Leasehold Interest in priority to all financial charges and encumbrances (including mortgages, assignments of rents, liens, options to purchase, and rights of first refusal); and
- (c) this Agreement will be registered as a charge against the Leasehold Interest on title to the Lands, pursuant to section 219 of the *Land Title Act*, and will be noted as a notation on title to the Lands pursuant to section 483 of the *Local Government Act*.

6.2 Miscellaneous

- (a) Kiwanis and the District agree that:
 - (1) this Agreement is entered into only for the benefit of the District;
 - (2) this Agreement is not intended to protect the interests of Kiwanis, any tenant, or any future owner, lessee, occupier or user of the Lands, the Development, the Buildings, or any Affordable Rental Unit; and
 - (3) the District may, at any time, execute a release and discharge of this Agreement, without liability to anyone for doing so, and without obtaining the consent of Kiwanis.
- (b) This Agreement burdens and runs with the Lands and any part into which any of them may be Subdivided. All covenants and agreements contained in this Agreement are made by Kiwanis for itself, its successors and assigns, and all persons who acquire an interest in the Lands after the date of this Agreement. Without limiting the foregoing, Kiwanis will not be liable for any breach of any covenant, promise or agreement herein in respect of any portion of the Lands sold, assigned, considered or otherwise disposed of, occurring after Kiwanis has ceased to hold the Leasehold Interest in the Lands.
- (c) This Agreement may only be modified in writing, signed by both parties, in registrable form. The modification will only be effective if it is approved both as a modification of a housing agreement pursuant to section 483 of the *Local Government Act* (which requires a bylaw), and

as a modification of a covenant pursuant to section 219 of the *Land Title Act*. Any modification will be filed in the Land Title Office as a modification of a covenant and as a modification of the housing agreement.

- (d) The rights given to the District by this Agreement are permissive only and nothing in this Agreement imposes any legal duty of any kind on the District to anyone, or obliges the District to enforce this Agreement, to perform any act or to incur any expense in respect of this Agreement.
- (e) The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement will not be construed as a waiver of any future or continuing failure, whether similar or dissimilar.
- (f) The District is not obligated to inspect the Lands or to otherwise ensure compliance with this Agreement, nor is the District obligated to remedy any default of this Agreement. A failure by the District to enforce this Agreement will not constitute a waiver of any of the District's rights herein.
- (g) If a Court of competent jurisdiction finds that any part of this Agreement is invalid, illegal, or unenforceable, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that finding or by the severance of that part.
- (h) All notices, demands, or requests of any kind, which a party may be required or permitted to serve on another in connection with this Agreement, must be in writing and may be served on the other parties by registered mail, or by personal service, to the address written on page 1 of this Agreement. All notices to the District must be addressed to the Chief Administrative Officer. Service of any such notice, demand, or request will be deemed complete, if made by registered mail, 72 hours after the date and hour of mailing, except where there is a postal service disruption during such period, in which case service will be deemed to be complete only upon actual delivery of the notice, demand or request; and if made by personal service, upon personal service being effected. Any party, from time to time, by notice in writing served upon the other parties, may designate a different address or different or additional persons to which all notices, demands, or requests are to be addressed.
- (i) Upon request by the District, Kiwanis will promptly do such acts and execute such documents as may be reasonably necessary, in the opinion of the District, to give effect to this Agreement.
- (j) This Agreement will ensure to the benefit of and be binding upon each of the parties and their successors and permitted assigns.
- (k) This Agreement, and any documents signed by Kiwanis contemplated by this Agreement, represents the whole agreement between the District and Kiwanis, and there are no warranties, representations, conditions or collateral agreements made by the District or Kiwanis except as set forth in this Agreement.

- (l) Nothing in this Agreement will constitute Kiwanis as the agent, joint venturer, or partner of the District or give Kiwanis any authority to bind the District in any way.
- (m) A reference in this Agreement to approval or consent of the District shall be a reference to approval by the District's Chief Administrative Officer or their designate. Nothing in this section precludes the Chief Administrative Officer from referring an approval or consent to the District's Council.
- (n) This Agreement can be signed in counterpart and delivered electronically.

IN WITNESS WHEREOF, the parties have executed the Form C to which this Agreement is attached to these Terms of Instrument.

SCHEDULE A
AFFORDABLE RENT

Unit Mix	Average Size (sq. ft) (which may vary up or down by 3%)	Average L1 Rent****	Average Rent/sq. ft.	% of Market Rent Rate
Studio*	415.8	\$1,141.29	\$2.74	75%
1-bd.*	603.1	\$1,479.28	\$2.45	75%
2-bd.**	803.7	\$2,035.85	\$2.53	75%
3-bd.***	1020.4	\$2,689.06	\$2.64	75%

*Floor level adjustment of \$20 per floor for Studio and 1-bd units

**Floor level adjustments of \$30 per floor for 2-bd

***Floor level adjustment of \$50 per floor for 3-bd units

****Rent will reflect square footage of the unit (on the basis of average rent/square foot)

**SCHEDULE B
ELIGIBLE TENANT**

An Eligible Tenant is a Tenant who meets all the following qualifications:

- (1) has a cumulative household gross annual income from all sources (including employment, disability, retirement, investment, and other) that does not exceed the BC Housing's Middle-Income Limits, from time to time. For clarity, as of the date of this Agreement:
 - i. for residential units with less than two (2) bedrooms, a gross household income that does not exceed the 75th income percentile for couples without children in BC, as determined by BC Housing from time to time. For 2022, this figure is \$121,330 (compared to \$118,440 last year); and
 - ii. for residential units with two (2) or more bedrooms, a gross household income that does not exceed the 75th income percentile for couples with children in BC, as determined by BC Housing from time to time. For 2022, this figure is \$173,800 (compared to \$168,310 last year);
- (2) do not currently own an interest in residential real property anywhere in the world, and are living in rental housing or another non-ownership tenure (e.g. living with family);
- (3) do not own assets (including stocks, bonds, term deposits, mutual funds and cash, real estate equity (net of debt), business equity in a private incorporated company, and such other assets as are valued by BC Housing from time to time to determine eligibility for supportive housing) in excess of:
 - i. for 2-bedroom units and for 3-bedroom units: \$400,000.00; and
 - ii. for studios and for 1-bedroom units: \$300,000.00;
- (4) can demonstrate a substantial connection to the West Vancouver community, including (without being exhaustive) in one or more of the following ways:
 - i. at least one member of the Tenant's household has resided in West Vancouver for at least 12 months;
 - ii. at least one member of the Tenant's household is employed in West Vancouver; and
 - iii. at least one member of the Tenant's household is enrolled in a school within the boundaries of the District of West Vancouver,

provided that if, despite reasonable efforts, Kiwanis is unable to find Eligible Tenants who meet the qualification in this paragraph (4), then, upon prior written approval of the District, which will not be unreasonably withheld, Kiwanis may accept otherwise Eligible Tenants who do not have a substantial connection to the West Vancouver community but

have a substantial connection to the North Shore community in the ways outlined immediately above. For the purpose of this section “North Shore” refers to the cumulative geographic area of the District of West Vancouver, the District of North Vancouver and the City of North Vancouver.

SCHEDULE C

STATUTORY DECLARATION

)	
CANADA)	
)	IN THE MATTER OF Unit Nos. _____ - _____ (collectively,
)	the " Affordable Rental Units ") located at
)	_____
PROVINCE OF BRITISH)	(<i>street address</i>), British Columbia, and Housing Agreement
COLUMBIA)	dated _____, 20____ (the " Housing
)	Agreement ") between Kiwanis North Shore Housing Society
)	and the District of West Vancouver (the " City ")
TO WIT:)	
)	

I, _____ (*full name*),

of _____ (*address*) in the Province

of British Columbia, DO SOLEMNLY DECLARE that:

I am _____ of Kiwanis North Shore Housing Society and have personal knowledge of the matters set out herein;

This declaration is made pursuant to the terms of the Housing Agreement in respect of the Affordable Housing Units for each of the 12 months for the period from January 1, 20____ to December 31, 20____ (the "Period");

Throughout the Period:

- (a) the Affordable Rental Units, if occupied, were occupied only by Eligible Tenants (as defined in the Housing Agreement);
- (b) all Affordable Rental Units have been rented at Affordable Rent (as defined in the Housing Agreement);
- (c) Affordable Rent has not exceeded 75 % of average market rent in the District of West Vancouver for equivalent units, except as expressly permitted in the Housing Agreement; and

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990 22nd Street
Housing Agreement and Covenant
Affordable Rental Housing

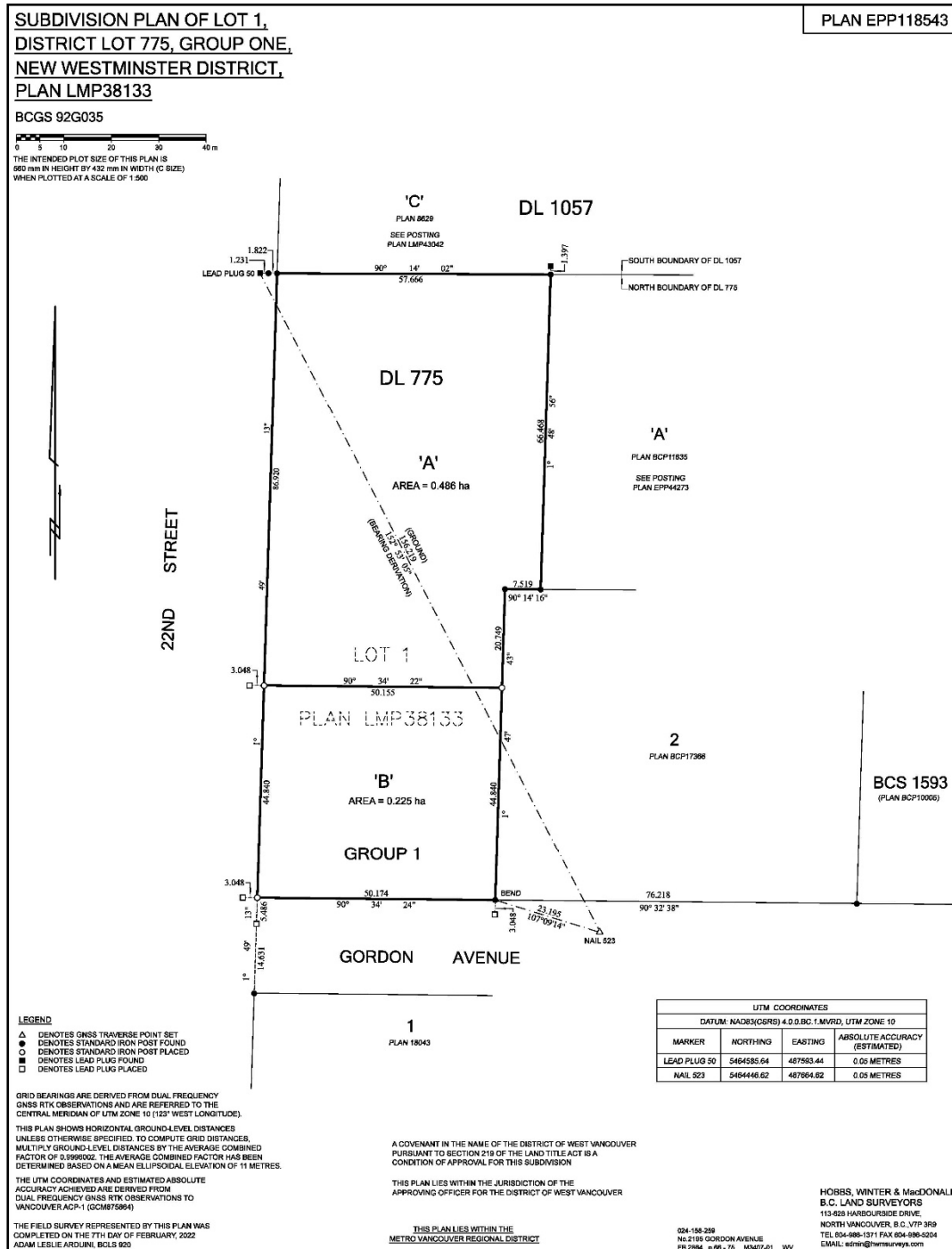
Appendix 1

Unit #	Rented (R) or Unrented (UR)	If rented: Current rent	If rented: Date current tenancy commenced	If rented: Date of last rent increase	If rented: % of last rent increase	Number of occupants

Appendix 2

[report to be attached, as and when applicable]

Schedule B – Plan of Proposed Parcel A



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APPENDIX 4

OFFER TO LEASE

GORDON AVENUE – PARCEL B

THIS OFFER (the “**Offer**”) is dated for reference , 2022 (the “**Reference Date**”),

BETWEEN:

THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER

750 – 17th Street, West Vancouver, BC V7V 3T3

(the “**Lessor**”)

AND:

2195 GORDON AVENUE LIMITED PARTNERSHIP

404 – 197 Forester Street, North Vancouver, BC V7H 0A6

(the “**Lessee**”)

WHEREAS:

- A. The Lessor is the owner of title in, or has a registered interest in, and to certain lands with a civic address of 2195 Gordon Avenue, West Vancouver, BC, more particularly known and described with the legal description set out in Schedule A attached hereto (the “**District Lands**”).
- B. Prior to the registration in the Land Title Office of the Lease herein defined, the Lessor intends to effect the subdivision of the District Lands pursuant to the full registration of a subdivision plan (the “**Subdivision Plan**”) with lot lines drawn substantially in accordance with the draft plan (the “**Lot Line Plan**”) attached as Schedule B to create, *inter alia*:
 - a. one parcel substantially shown as newly-created “Proposed Lot A” on the Lot Line Plan (“**Parcel A**”); and
 - b. one parcel substantially shown as newly-created “Proposed Lot B” on the Lot Line Plan (“**Parcel B**”).
- C. Pursuant to a memorandum of understanding made between the Lessor, the Lessee and Kiwanis North Shore Housing Society (“**Kiwanis**”) dated for reference July, 2021 (the “**MOU**”), the Lessor wishes to lease to the Lessee and the Lessee wishes to lease from the Lessor Parcel B (as defined hereinafter) for the purpose of constructing a building comprised of leasehold strata residential units on Parcel B (the “**Building**”), on the terms and conditions of this Offer and in the Lease (as defined hereinafter).
- D. The Lessor agrees to execute directly in favour of the Lessee, or to a third party or to third parties, as applicable, and as requested by the Lessee in accordance with Section 10.7 of this Offer, a lease in the form and with the content attached as Schedule C in respect of Parcel B (the “**Lease**”), which includes the model strata lot lease in respect of Parcel B.

NOW THEREFORE:

1.0 **OFFER TO LEASE**

1.1 The Lease. The Lessee offers to lease Parcel B from the Lessor for an aggregate term commencing on the effective date of the Lease (as set out in the first line on page one of the Lease) (the “**Commencement Date**”) inclusive of:

- (a) a period of time from the Commencement Date of up to the earlier of:
 - (i) the date of the first Certificate of Occupancy in respect of the Building; or
 - (ii) 60 months following the Commencement Date; and
- (b) a 99 year term commencing on the earlier of:
 - (i) the date of the first Certificate of Occupancy in respect of the Building; or
 - (ii) 60 months following the Commencement Date,

on the terms and conditions set out in this Offer and in the Lease, free and clear of all liens, charges and encumbrances except for the encumbrances set out in Schedule D (collectively, the “**Permitted Encumbrances**”) as relevant to Parcel B and subject to the restrictions on land use contained in a provision of a bylaw, permit, plan, policy, guideline, regulation, resolution, order or any other similar document enacted or passed by the Province of British Columbia, Canada or the Council of the District of West Vancouver, including the:

- (a) Development Procedures Bylaw No. 4940, 2017;
- (b) Official Community Plan Bylaw No 4985, 2018 (the “**Official Community Plan**”);
- (c) Zoning Bylaw No. 4662, 2010 (the “**Zoning Bylaw**”);
- (d) Building Bylaw No. 4400, 2004;
- (e) Fees and Charges Bylaw No. 5025, 2019;
- (f) Development Cost Charge Bylaw No. 3801, 1993; and
- (g) restrictive or statutory covenants, and statutory rights of way, required by the District of West Vancouver as a government or the District of West Vancouver’s approving officer in connection with the development of the Project (as defined hereinafter) on Parcel B;

each as amended or replaced from time to time before or after the date of this Offer, and every other applicable District of West Vancouver bylaw; or contained in all other lawful municipality, approving officer, building official or provincial or federal requirements governing land use and the construction, renovation, maintenance, repair and replacement of any building on Parcel B (collectively, the “**Development Controls**”) which are in effect from time to time, the forms of each of which (as at the date of this Offer) have been reviewed and approved by the Lessee, and the Lessee agrees to be bound by same.

For the purposes of this Offer, the term “**Certificate of Occupancy**” shall mean a document issued by the Corporation of the District of West Vancouver in its capacity as a governmental

authority accepting evidence of compliance by any building constructed, renovated, maintained, repaired, or replaced on Parcel B with applicable building codes and other laws, and indicating the building to be in a condition suitable for occupancy, but does not include any such document issued for any sales centre in connection with the Project (as defined hereinafter).

1.2 The Rent.

The rent payable by the Lessee to the Lessor for the Lease will be \$22,195,000.00 (the “**Basic Rent**”), subject to adjustment under Section 1.5 of this Offer.

1.3 Particulars of the Project.

The anticipated particulars of the Lessee’s proposed improvements on Parcel B intend to be an eight (8) storey leasehold residential strata development project (the “**Project**”), developed in accordance with the Development Controls all as applicable to Parcel B from time to time.

The Lessee’s use of Parcel B will also be subject to the Permitted Encumbrances, and each of the agreements contemplated therein, as applicable to Parcel B. The Lessee at its sole cost will observe, perform and comply with the obligations under the relevant Permitted Encumbrances and the requirements under the Development Controls. The Lessee will indemnify and save harmless the Lessor and its elected officials, officers, employees, consultants, solicitors and agents (collectively, the “**Indemnified Parties**”) against all losses the Lessor or its Indemnified Parties or any one or more of them may incur as a result of the default under any of the Lessee’s obligations under the Permitted Encumbrances.

1.4 Payment of the Basic Rent.

- (a) Subject to the adjustments described herein, the Basic Rent will be payable by the Lessee as follows by payment of:
 - (i) \$100,000.00 by way of cheque, certified cheque or bank draft payable to the Lessor's solicitors, in trust on or before the fifth (5th) business day following receipt by the Lessee of a copy of this Offer, executed by the Lessor accepting this Offer (the “**Acceptance Date**”), to be held by the Lessor’s solicitors in an interest bearing account, pursuant to the terms of this Offer, until the Closing Date;
 - (ii) \$1,000,000.00 (which together with the initial payment described in subparagraph 1.4(a)(i) above is the “**Deposit**”), by way of cheque, certified cheque or bank draft payable to the Lessor's solicitors, in trust on or before the second (2nd) business day following the date when the Lessee delivers to the Lessor the notice of waiver or satisfaction of all of the conditions contained in Sections 4.2(a), 4.2(b), 4.2(c), 4.2(c), 4.2(e) and 4.2(g); and
 - (iii) Subject to the provisions of Sections 6.8 and 10.2, the balance (subject to adjustments under Section 1.5 of this Offer) of the Basic Rent on the Closing Date, pursuant to Article 6.0 of this Offer.
- (b) Upon default by the Lessee hereunder, including the failure of the Lessee to enter into the Lease pursuant to this Offer, the Lessor’s solicitors are irrevocably directed to release to the Lessor the Deposit, and the Deposit then paid together with accrued interest thereon will be retained by the Lessor as liquidated damages for

breach of contract without prejudice to any other remedies available to the Lessor at law or in equity.

- (c) Upon default by the Lessor hereunder, then the Lessor's solicitors are irrevocably directed to release the Deposit paid to the Lessee on the Closing Date together with accrued interest, without prejudice to any other remedies available to the Lessee at law or in equity.

1.5 Adjustments

All adjustments with respect to taxes, utilities and all other items normally adjusted between a lessor and lessee on the long term lease of land shall be made with respect to Parcel B as of the Closing Date.

1.6 Documents

The Lessor shall deliver to the Lessee, within seven (7) days following the Acceptance Date, accurate and complete copies of the following documents, if and to the extent known to be in the possession or control of the Lessor, as determined by the Deputy Chief Administrative Officer, after due and diligent inquiry:

- (a) a scope of work for offsite works and services required by the Corporation of the District of West Vancouver in its capacity as a local government, subject to the District's statutory powers and its reasonable due diligence prior to subdivision of the District Lands and issuance of a building permit for the Building, to be constructed and installed by the Lessor or Lessee, as determined by the Lessor, and solely paid for by the Lessee in connection with the Development Controls as a condition of building permit and occupancy permit issuance with respect to the Building, subdivision of the District Lands, or both;
- (b) copy of the standard template servicing agreement in blank form typically required by the District, its approving officer and its building official, in connection with the granting of development approvals;
- (c) copy of the draft terms and conditions of a section 219 *Land Title Act* covenant between the Lessor as the fee simple owner of Parcel B and the Corporation of the District of West Vancouver in its capacity as a local government, in favour of the Corporation of the District of West Vancouver restricting the use of Parcel B except in accordance with the terms and conditions contained in this no build covenant (the "**No Build Covenant**");
- (d) copies of any geotechnical, engineering, survey, soil test or other reports or studies relating to the District Lands or any part thereof, if any, affecting the District Lands;
- (e) copies of any traffic studies, archaeological studies and zoning studies related to development of the District Lands or any part thereof;
- (f) copies of all other existing agreements and contracts in force as of the Acceptance Date affecting any aspect of the District Lands, or the District Lands use, development or construction; and

- (g) copies of all existing environmental reports or studies for the District Lands, including all environmental assessment reports, together with written authorizations from the Lessor to the issuers permitting the issuers to consult with the Lessee (provided that any fees or disbursements charged by the issuers for such consultation with the Lessee are to be paid for by the Lessee),

(collectively, the “**Documents**”).

Any documents in the nature of the Documents which come into the Lessor’s possession or control after the initial delivery thereof shall be delivered by the Lessor to the Lessee as soon as reasonably possible and the Lessor shall so advise the Lessee in writing.

Notwithstanding the foregoing, and for greater certainty, the Lessor is not required to deliver any Documents which: were generated in the Lessor’s capacity as a local governing authority over the District Lands, as opposed to in its capacity as a land owner of the District Lands; previously delivered or made available to the Lessee, or generated by or on behalf of the Lessee and previously delivered to the Lessor.

2.0 REPRESENTATIONS AND WARRANTIES

2.1 Representations and Warranties of the Lessor. The Lessor hereby represents and warrants to the Lessee with the intent that the Lessee shall rely thereon in making this Offer and in concluding the Lease contemplated herein, that as of the date hereof (unless otherwise specified) and on the Closing Date (unless this Offer is earlier terminated):

- (a) the Lessor is resident in Canada within the meaning of the *Income Tax Act* (Canada);
- (b) the Lessor has all requisite authority to grant a Lease of Parcel B, free and clear of all liens, charges and encumbrances save and except for the Permitted Encumbrances, subject to subdivision of the District Lands to create Parcel B under Section 3.2(g);
- (c) Parcel B is subject to the land use restrictions set out in the Development Controls and the Permitted Encumbrances; and
- (d) the Lessor shall deliver Parcel B on the Closing Date in the same condition (including environmentally, geotechnical or otherwise) that it was on the date that the Lessee satisfied or waived the Lessee’s condition set out in Section 4.2(a).

2.2 Representations and Warranties of the Lessee. The Lessee hereby represents and warrants to the Lessor with the intent that the Lessor shall rely thereon in accepting this Offer and in concluding the Lease contemplated herein, that as of the date hereof (unless otherwise specified) and on the Closing Date (unless this Offer is earlier terminated):

- (a) the Lessee is resident in Canada within the meaning of the *Income Tax Act* (Canada); and
- (b) the Lessee has all requisite authority to enter into a Lease of Parcel B.

2.3 Survival of Representations and Warranties. The representations and warranties contained in this Article 2.0 shall survive the Closing Date and shall continue in full force and

effect for the benefit of the recipient party, for a period of two (2) years after the Closing Date. Notwithstanding the foregoing, the representations and warranties contained in Section 2.1(d) shall survive the Closing Date and remain in full force and effect indefinitely.

3.0 COVENANTS

3.1 Covenants of the Lessee. The Lessee hereby covenants and agrees to execute and deliver to the Lessor, on or before the Closing Date (unless otherwise specified), the following documents in registrable form, where required to be in registrable form:

- (a) an assumption agreement and, upon the formation of each of the strata corporations by the Lessee to lease any portion of Parcel B post-Closing, if any, the Lessee will cause each strata corporation to also execute an assumption agreement, agreeing to be bound by all the Permitted Encumbrances in respect of Parcel B;
- (b) the Lease in the form and with the content attached as Schedule C;
- (c) an agreement reasonably satisfactory to the Lessor between Kiwanis and the Lessee to provide for the completion of the transactions contemplated within each party's offer to lease with the Lessor, for Parcel A and Parcel B, respectively, (including registration of the leases for Parcel A and Parcel B) on the same day; and
- (d) such other agreements or other documents as the Lessor may require in connection with the Lessee's obligation under this Offer to be bound by the Permitted Encumbrances. Such agreements will include a covenant whereby the Lessee will indemnify, release and save harmless the Lessor and its Indemnified Parties from and against all losses the Lessor or its Indemnified Parties or any one or more of them may incur as a result of a default under any of the Lessee's obligations under the Permitted Encumbrances.

The Lessee hereby acknowledges that the execution and delivery by the Lessee to the Lessor of a final completed onsite and offsite works and services servicing agreement to the satisfaction of the District will be required by the District prior to the issuance of building occupancy permits for the Building (the "**Servicing Agreement**"), the agreement being subject to the final detailed scope to be determined by the Corporation of the District of West Vancouver in its capacity as a local government as described in Section 1.6(a) and subject to delivery to the Lessee by the Lessor of the standard template servicing agreement as described in Section 1.6(b).

3.2 Covenants of the Lessor. The Lessor hereby covenants and agrees with the Lessee that at any time after this Offer has been accepted by the Lessor and continuing until the Closing Date (and unless this Offer is earlier terminated), the Lessor will:

- (a) permit the Lessee and the Lessee's employees, engineers, agents and advisors (and, as applicable, third party assignees of the Lessee and such assignees' respective employees, engineers, agents and advisors) to enter onto the District Lands and carry out such inspections, tests, studies, surveys and investigations of the District Lands as the Lessee may reasonably require, provided that the Lessee shall make good, at the Lessee's cost and to the reasonable satisfaction of the Lessor, any damage caused by the Lessee in carrying out the same;

- (b) act in good faith and co-operate with the Lessee in respect of any reasonable requests made by the Lessee to the Lessor as owner of the District Lands in respect of the development of Parcel B including executing, upon the request of the Lessee, any applications, licenses, permits or other documentation required by the Lessor, or by the District of West Vancouver as a government, or any other governmental authority in connection therewith provided that the Lessee will not, without the Lessor's consent, make any commitments which will result in any liability or contravention of enactments including District of West Vancouver bylaws, or be otherwise prejudicial, to the Lessor, if the lease transactions contemplated herein do not complete and, in any event, the Lessee hereby agrees to indemnify, release and save harmless the Lessor against any such liability;
- (c) give to the Lessee and its representatives and agents upon reasonable notice, full access to the Lessor's Records (as defined in Section 7.1(a)), except such records that may be protected from disclosure under the *Freedom of Information and Protection of Privacy Act* (British Columbia);
- (d) not enter into any contract or agreement or any transaction whatsoever in respect of Parcel B which is not a Permitted Encumbrance, other than the Development Controls, unless approved by the Lessee, acting reasonably, or otherwise expressly contemplated by this Offer;
- (e) subject to satisfaction of the conditions precedent described herein in accordance with their terms, grant a Lease to the Lessee, or to a permitted third party as requested by the Lessee in accordance with Section 10.7 of this Offer, of Parcel B on the Closing Date, free and clear of all encumbrances except the Permitted Encumbrances;
- (f) discharge from Parcel B on or before the Closing Date, all Development Controls which are not required for the development of the Project on Parcel B, as determined by the Lessor, acting reasonably;
- (g) on or before the Lessee's Third Condition Removal Date, cause the Subdivision Plan to be fully registered in the Land Title Office to raise title to Parcel A and Parcel B, which plan will be pre-approved by the Lessee acting reasonably in respect of the dimensions and boundary lines of Parcel B. The Lessor shall be responsible for all costs associated with preparing and registering the Subdivision Plan, including all costs relating to the filing and final registration thereof;
- (h) act reasonably at all times with respect to the processing and issuance of any permit applied for by the Lessee in connection with the Project (including but not limited to any development permit) and, provided the Lessor is the owner of Parcel B and the Lease has not yet been executed and delivered by the parties thereto, the Lessor (in its capacity as a government body) may issue any permit with respect to the Project to the Lessor (in its capacity as the owner) or a sales centre to a party acceptable to the Lessee in respect of the Project, it being acknowledged by the parties that the Lessor or any party acceptable to the Lessor, acting reasonably, may make the application for any such permit as agent on behalf of the Lessor in accordance with (if required by the Lessor) an agency agreement that may be entered into by the Lessor and the Lessee or such party; and

- (i) deliver to the Lessor's solicitors, on or before the Closing Date, any of the documents referred to in Section 3.1 to which the Lessor is a party and which the Lessor has executed, acting reasonably.

3.3 Survival.

The terms of this Article 3.0 shall survive the Closing Date and shall continue in full force and effect for the benefit of the applicable party hereto in accordance with the terms of this Article 3.0.

4.0 **CONDITIONS**

4.1 Condition of the Lessor's Obligation. The Lessor's obligation to carry out the transactions contemplated herein is subject to the fulfillment of the following conditions on or by the applicable date described below, unless and to the extent satisfied or waived in writing by the Lessor:

- (a) delivery by the Lessee to the Lessor, within seven (7) days of the Acceptance Date, of the draft terms and conditions of a cross access agreement among the Lessor as the fee simple owner of Parcel B, the Lessor as the fee simple owner of Parcel A, and the Corporation of the District of West Vancouver in its capacity as a local government, for the shared use by the owners (including Kiwanis and the Lessee as leasehold owners) of a single underground parking ramp and other building elements (collectively, the "**Parking Ramp**"), all of which will be located on Parcel B, that arise from the shared use of portions of the ground level landscaping and underground works and facilities, including (i) a section 219 *Land Title Act* covenant in favour of the Lessor restricting the use of Parcel B except in accordance with the cross access agreement, and (ii) terms that permit the completion of the Parking Ramp by a date in respect of which an occupancy certificate is expected to be issued for the project to be constructed by Kiwanis on Parcel A (the "**Cross Access Agreement**");
- (b) the Lessor's satisfaction, in its sole discretion, as to the final terms and conditions of the Cross Access Agreement, on or before the date that is thirty (30) days after the Lessee has satisfied or waived the Lessee's conditions set out in Sections 4.2(a) and 4.2(b) (the "**Lessor's Condition Removal Date**");
- (c) the final registration of the Subdivision Plan and the rezoning of the District Lands (to amend the location of the lot line between Parcel A and Parcel B on plan in section 661.03 of the District of West Vancouver's Zoning Bylaw No. 4662, 2010 to align with the location of such lot line as set forth on the Lot Line Plan) are, in the opinion of the Lessor acting reasonably, consistent with the development permit application made by the Lessee and Kiwanis in respect of Parcel B and Parcel A, respectively, on or before the Lessee's Third Condition Removal Date (as defined herein);
- (d) the Lessor's satisfaction, in its sole discretion, with the waiver or satisfaction of all of the conditions precedent that are specified in an offer to lease between the Lessor and Kiwanis dated ●, 2022 in respect of Parcel A (the "**Kiwanis OTL**"), on or before the Closing Date;
- (e) the documents and sums of money referred to in Section 6.3 having been executed and delivered as therein provided on or before the Closing Date; and

- (f) the representations and warranties made herein by the Lessee shall be true and accurate with the same effect as if made on and as of the Closing Date.

4.2 Condition of the Lessee's Obligation. The Lessee's obligation to carry out the transactions contemplated herein is subject to the fulfilment of each of the following conditions on or by the applicable date described below, unless and to the extent satisfied or waived in writing by the Lessee:

- (a) the Lessee's satisfaction, in its sole discretion, as to the state of Parcel B, including without limitation, the title, the Permitted Encumbrances, the physical condition of the Parcel B, and the feasibility and suitability of the Project on or before the date that is fourteen (14) days after the Lessor providing the Documents to the Lessee (the "**Lessee's Initial Condition Removal Date**");
- (b) the Lessee's satisfaction, in its sole discretion, with the scope of work for offsite works and services referred to in Section 1.6(a) and the estimated costs associated therewith on or before the Lessee's Initial Condition Removal Date;
- (c) the Lessee's satisfaction, acting reasonably, as to the final terms and conditions of the Cross Access Agreement, on or before the date that is thirty (30) days after the Lessee has satisfied or waived the Lessee's conditions set out in Sections 4.2(a) and 4.2(b) (the "**Lessee's Second Condition Removal Date**");
- (d) the Lessee's satisfaction, in its sole discretion, as to the final terms and conditions of the No Build Covenant, on or before the Lessee's Second Condition Removal Date;
- (e) the Lessee's satisfaction, acting reasonably, that the Subdivision Plan is consistent with the development permit application made by the Lessee in respect of Parcel B, on or before the Lessee's Second Condition Removal Date;
- (f) the Lessee's satisfaction, in its sole discretion, with the waiver or satisfaction of all of the conditions precedent that are specified in the Kiwanis OTL, on or before the Closing Date;
- (g) the final registration of the Subdivision Plan and the rezoning of the District Lands (to amend the location of the lot line between Parcel A and Parcel B on plan in section 661.03 of the District of West Vancouver's Zoning Bylaw No. 4662, 2010 to align with the location of such lot line as set forth on the Lot Line Plan) are, in the opinion of the Lessee acting reasonably, consistent with the development permit application made by the Lessee in respect of the Parcel B, on or before the date that is twenty-one (21) days after the Lessee has satisfied or waived all of the Lessee's conditions set out in Sections 4.2(a), 4.2(b), 4.2(c), 4.2(c) and 4.2(e) (the "**Lessee's Third Condition Removal Date**");
- (h) that the documents referred to in Section 6.2 shall have been executed and delivered as therein provided, on or before the Closing Date;
- (i) title to Parcel B shall be free and clear of all liens, charges and encumbrances, save and except for the Permitted Encumbrances, as of the Closing Date; and
- (j) the representations and warranties made herein by the Lessor shall be true and accurate with the same effect as if made on and as of the Closing Date.

4.3 Satisfaction of Conditions. Each party hereto agrees to proceed in good faith and with promptness and diligence to attempt to satisfy the conditions contained in Sections 4.1 and 4.2 which are within its reasonable control. The Lessee understands that if the Lessor waives the conditions contained in Section 4.1, then the Lessee will be obligated to close in accordance with Article 6.0, so long as the conditions in Section 4.2 have been satisfied or waived by the Lessee within the times limited therefor, or any extension thereof.

4.4 Waiver and Termination. In case any condition contained in Sections 4.1 and 4.2 has not been satisfied by the deadlines set therefor, the party for whose benefit the condition has been included may terminate this Offer by notice in writing to the other party, in which event the Deposit together with accrued interest shall be promptly paid to the Lessee; PROVIDED however, that the party entitled to termination shall be entitled to waive compliance with any condition in whole or in part, if it sees fit to do so, without prejudice to any of its other rights under this Offer, or of its rights of termination in the event of non-performance of any other condition in whole or in part. Any waiver given hereunder shall be in writing. This Section 4.4 shall survive the termination of the agreement created by the Lessor's acceptance of this Offer.

4.5 Consideration for Conditions. As the conditions described in Section 4.1 and Section 4.2 are for the sole benefit of the Lessor and Lessee, respectively, and may be waived by written notice to the other party prior to the dates specified therein,

- (a) in consideration of a \$10.00 non-refundable sum paid by the Lessor to the Lessee, and other good and valuable consideration (the receipt and sufficiency of which the Lessee acknowledges), the Lessee will allow the Lessor the benefit of the conditions described in Section 4.1 and agrees that this Offer, and the agreement created by the Lessor's acceptance of this Offer, is irrevocable after the Acceptance Date; and
- (b) in consideration of a \$10.00 non-refundable sum paid by the Lessee to the Lessor, and other good and valuable consideration (the receipt and sufficiency of which the Lessor acknowledges), the Lessor will allow the Lessee the benefit of the conditions described in Section 4.2 and agrees that this Offer, and the agreement created by the Lessor's acceptance of this Offer, is irrevocable after the Acceptance Date.

5.0 RISK

5.1 The Passing of Risk. Parcel B shall be at the risk of the Lessor until completion of the Closing and thereafter shall be at the risk of the Lessee in accordance with the terms of the Lease, except that any sales centre building in connection with the Project shall always be at the sole risk of the Lessee.

6.0 CLOSING ARRANGEMENTS

6.1 The Closing. Subject to satisfaction or waiver (as applicable) of the conditions precedent in Article 4.0, the closing of the transaction contemplated herein (the "**Closing**") will occur on the earlier of: (i) September 19, 2022; and (ii) the date that is thirty (30) days following the issuance of a building permit for the Project, other than any building permit issued for any sales centre in connection with the Project (the "**Closing Date**"), unless the Lessor and Lessee consent in writing to an alternative date.

6.2 Documents of the Lessor. No later than two (2) business days before the Closing Date the Lessor shall deliver to the Lessee's solicitors the following:

- (a) the Lease in final form, duly executed by the Lessor in registrable form leasing Parcel B to the Lessee, or to a third party(ies) as directed by the Lessee in accordance with Section 10.7 of this Offer, free and clear of all liens, charges and encumbrances, save and except for the Permitted Encumbrances applicable to Parcel B;
- (b) any documents that are required to be executed for the Closing by the Lessor under this Offer, including without limitation under Section 3.2, duly executed by the Lessor in registrable form (to the extent applicable);
- (c) the Lessor's Statement of Adjustments signed by the Lessor;
- (d) Cross Access Agreement, duly executed by the Lessor in registrable form; and
- (e) a certificate of the Lessor's Corporate Officer certifying as true the resolution of Mayor and Council of the Lessor authorizing the granting of the Lease to the Lessee.

6.3 Documents of the Lessee. On or before the Closing Date the Lessee shall deliver to its solicitors (or, with respect to the documents in Section 6.3(b), to the lender's solicitors):

- (a) details of a wire transfer into the trust account of its solicitors, or bank draft payable to its solicitors in trust, for the portion of the Basic Rent due at the time of the Closing (as adjusted pursuant to this Offer), less the estimated net proceeds of any purchase mortgage financing for the Closing, if permitted under the Lease;
- (b) subject to the terms and conditions of the Lease, such documents as are needed to effect registration of the Lessee's mortgage financing, if any;
- (c) the Lessee's Statement of Adjustments signed by the Lessee;
- (d) a true copy of the Lease in final form for Parcel B duly executed by the Lessee, or a third party(ies) as directed by the Lessee in accordance with Section 10.7 of this Offer;
- (e) a true copy of the documents that are required to be executed for the Closing by the Lessee, (or a third party(ies) as directed by the Lessee in accordance with Section 10.7 of this Offer), under this Offer, including without limitation under Section 3.1 (other than any assumption agreements to be executed by strata corporations, if any, referred to in Section 3.1(a)); and
- (f) if applicable, a certificate duly executed by the Lessee relating to the payment of federal Goods and Services Tax, in the form attached hereto as Schedule E, unless the Lessor and the Lessee, each acting reasonably on the basis of tax advice, determine that the federal Goods and Services Tax does not apply, including where the Project on Parcel B is a "residential complex".

6.4 Closing Escrow. Following receipt of the funds referred to in Subsection 6.3(a), the Lessee shall cause its solicitors to submit the Cross Access Agreement and the Lease for registration in the appropriate Land Title Office, on the Closing Date, and following the acceptance

of the Cross Access Agreement and the Lease for registration, the Lessee's solicitors shall make available a solicitor's trust cheque, or deliver to the Lessor's solicitors evidence that they have wire transferred to the bank account of the Lessor (details of the bank account to be provided by the Lessor prior to the Closing Date), the adjusted balance of the Basic Rent shown on the Lessor's Statement of Adjustments to be payable on the Closing Date (the "**Balance Due**") upon the Lessee's solicitor conducting a post acceptance search of Parcel B for the Closing at the Land Title Office disclosing only the following:

- (a) the existing title number for Parcel B;
- (b) the Permitted Encumbrances for Parcel B;
- (c) the pending registration numbers of the Cross Access Agreement;
- (d) the pending registration number of the Lease; and
- (e) the pending numbers assigned to any security documents applicable to any mortgage financing arranged by the Lessee, or a third party(ies) as directed by the Lessee in accordance with Section 10.7 of this Offer, in connection with the Lease, and any other charges granted by the Lessee, or a third party(ies) as directed by the Lessee in accordance with Section 10.7 of this Offer.

6.5 Payment of Fees and Taxes. Each party shall be responsible for its own legal fees. The Lessee shall be responsible for payment of the Goods and Services Tax (if applicable), Property Transfer Tax, and any registration fees in connection with the Lease. The Lessee hereby releases, and will defend and hold harmless, the Lessor and its Indemnified Parties from any and all actions, causes of action, suits, judgments, proceedings, demands and claims, whether at law or in equity, losses, damages, expenses and costs (including legal fees and disbursements on an indemnity basis) of any kind or nature whatsoever, at law or in equity, for any damage or loss arising out of or in any way related to any property transfer tax payable to the Ministry of Finance (British Columbia) in connection with the transactions contemplated herein.

6.6 Possession. The Lessor shall deliver vacant possession of Parcel B to the Lessee and/or to any third party(ies) as directed by the Lessee in accordance with Section 10.7 of this Offer, on the Closing Date, subject only to the charges represented by the pending registration numbers referred to in Section 6.4 and the Permitted Encumbrances, and subject to the existence of any sales centre in connection with the Project.

6.7 Preparation of Closing Documents. The Statement of Adjustments, the Lease, the documents referred to in Section 3.1 (other than any assumption agreements to be executed by strata corporations) and the certificate relating to the payment of the federal Goods and Services Tax (if applicable) shall be prepared by the solicitors for the Lessee.

6.8 Wire Transfers. If the Lessee's solicitor has elected to pay the Balance Due by wire transfer, provided the Lessee's solicitors shall have initiated the wire transfer for the Balance Due to the Lessor or its solicitors on the Closing Date, and shall have provided the Lessor's solicitors with written confirmation thereof, the Lessee will be deemed to have paid the Balance Due to the Lessor if the Balance Due is credited to the Lessor's or its solicitor's account by 11:00 a.m. (Vancouver time) on the first business day following the Closing Date. If the Balance Due to the Lessor is credited to the Lessor's or its solicitor's account after 11:00 a.m. on the first business day following the Closing Date, then the Lessee shall be liable to pay, in addition to the Balance Due, interest at the rate of 5% per annum calculated on the Balance Due from the Closing Date

until the date the Balance Due is credited to the Lessor's or its solicitors account. If the Balance Due to the Lessor is not credited to the Lessor's or its solicitors account within two (2) business days of the Closing Date, the Lessee is in default hereunder and Section 1.4, including Section 1.4(b), applies, unless the parties otherwise agree in writing.

7.0 **ACKNOWLEDGEMENTS**

7.1 Lessee's Acknowledgements. The Lessee hereby represents, acknowledges and agrees that:

- (a) the Lessee has been given an opportunity to review any reports and materials pertaining to the District Lands which were made available by the Lessor, including the Documents, (the "**Lessor's Records**") and to verify the accuracy of the information in the Lessor's Records, but acknowledges that it makes this Offer without relying on any representation or warranty from the Lessor, as either regulator or lessor, or any of its directors, officers, agents, employees or consultants in respect of:
 - (i) the accuracy or completeness of the information contained in the Lessor's Records;
 - (ii) the physical condition of, or any other matter relating to Parcel B, including governmental requirements for the development of Parcel B;
- (b) Parcel B is acceptable to the Lessee in an "as is" condition;
- (c) subject to the transactions contemplated herein closing on the Closing Date, the Lessee will:
 - (i) pay the District of West Vancouver applicable fees and development cost charges (but not including any development cost charges payable in connection with the Subdivision which are a Lessor cost pursuant to Section 3.2(g)), if any, to obtain approvals in connection with the Development Controls, in respect of Parcel B only;
 - (ii) pay all utility connection and application fees, including but not limited to connection and application fees payable to connect electrical, gas, telephone, cable services and the water and storm and sanitary sewer systems to Parcel B;
 - (iii) pay all fees and charges including development cost charges imposed by the Greater Vancouver Sewerage and Drainage District and Greater Vancouver Water District with respect to Parcel B; and
 - (iv) prior to issuance of a building permit for the Building, execute and deliver the Servicing Agreement and deliver the letter of credit security to secure completion of the construction and installation of works and services required by the Lessor in respect of the Servicing Agreement;
- (d) the connection points for services to Parcel B will be to connection points to be specified by the Lessor;

- (e) for certainty, if the Lessee is in default under this Offer, the Lessee is not entitled to receive from the Lessor, and the Lessor is not obligated to pay the Lessee, any consideration under contract, unjust enrichment or otherwise for any improvements to Parcel B or to property of the Lessor constructed and paid for by the Lessee prior to the date of such default;
- (f) the Lessee shall deliver to the Lessor concurrently with its filing with the Superintendent of Real Estate, a copy of each of the Lessee's disclosure statements with respect to Parcel B and all amendments made thereto from time to time; and
- (g) the form of the Lease has been approved by the Lessee, and the Lessee agrees to be bound by the same, including without limitation, the clauses that have been added to the Lease which require the Lessee under the Lease, the lessees under the model strata lot lease attached to the Lease and the strata corporation to be bound by the Development Controls.

7.2 Survival of Representations and Acknowledgements. Unless otherwise specified herein, the representations and acknowledgements contained in Section 7.1 shall survive the Closing Date and shall continue in full force and effect for the benefit of the Lessor or the Lessee, as applicable.

8.0 **Condition of Parcel B**

8.1 Condition. The Lessee hereby acknowledges and agrees that, subject to the Lessor's representations and warranties contained in Section 2.1(d):

- (a) the Lessee is acquiring Parcel B on an "as is and where is" basis with no representations or warranties as to its condition, environmentally, geotechnical or otherwise, or its suitability for the Lessee's purposes, except as set out in this Offer or the Lease;
- (b) the Lessee hereby waives any requirement for the Lessor to provide the Lessee with a "site disclosure statement" under the *Environmental Management Act* (British Columbia);
- (c) the Lessee is acquiring Parcel B and entering into this Offer relying on its own inspections and not representations, warranties or covenants of the Lessor, except as set out in this Offer or the Lease;
- (d) there are no representations, warranties, guarantees, agreements or conditions, whether direct or collateral, or express or implied, which induced the Lessee to enter into this Offer or on which reliance is placed by the Lessee, or which affects the Offer or Parcel B, other than as specifically set out in this Offer or the Lease;
- (e) the Lessee is relying on its own due diligence in reviewing the Documents and that the Documents are not intended to constitute a representation or warranty as to any of the contents thereof on the part of the Lessor; and
- (f) the Lessor neither makes nor gives any representation, warranty or covenant with respect to the environmental condition of Parcel B including,

without limitation, any representation, warranty or covenant as to whether or not Parcel B contains any waste, hazardous or toxic wastes or other environmentally sensitive or unwanted substances of any nature whatsoever.

8.2 As is Where Is. The Lessee covenants and agrees that the Lessor will have no liability whatsoever, and the Lessee must not make any claims against the Lessor in respect of, any contamination due to or the result of any Hazardous Materials being located on Parcel B or migrating to or from Parcel B, other than any liabilities which result from any breach by the Lessor of the Lessor's representations and warranties contained in Section 2.1(d). For the purposes of this Section 8.2, "Hazardous Materials" means any underground storage tanks, any explosive or radioactive materials, pollutants, contaminants, hazardous, corrosive or toxic substances, special waste or waste of any kind, including, without limitation, compounds known as chlorobiphenyls, chlorophenols, petroleum and any other substance or material the storage, manufacture, disposal, treatment, generation, use, transportation, remediation or release into the environment of which is prohibited, controlled, regulated or licensed under environmental laws.

9.0 **PARENT GUARANTEE**

9.1 Parent Guarantee. Concurrent with delivering the Deposit in accordance with Section 1.4(a)(i), the Lessee must deliver to the Lessor an originally executed copy of a guarantee in the form attached hereto as Schedule F, pursuant to which Darwin Properties (Canada) Ltd. will guarantee the performance of the Lessee's obligations under this Offer.

10.0 **MISCELLANEOUS**

10.1 Time. Time shall be of the essence of this Offer and the transactions contemplated herein.

10.2 Tender. Any tender of documents or money may be made upon the party being tendered or upon its solicitors and money may be tendered by cheque (in respect of the Deposit only), certified cheque, bank draft or wire transfer if the amount to be tendered is less than \$25,000,000.00, and only by wire transfer of funds if it is equal to or more than \$25,000,000.00, to the trust account of the solicitors for the party being tendered upon, unless otherwise set out herein.

10.3 Relationship of the Parties. Nothing herein shall be construed to make the Lessee a partner, agent or joint venturer of the Lessor at any time, or the Lessee a freehold owner of Parcel B for any purpose.

10.4 Notice. Any notice or consent required or permitted to be given under this Offer will be in writing and will be given by delivery or email addressed to the recipient as follows:

(a) To the Lessee at:

2195 Gordon Avenue Limited Partnership
404 -197 Forester Street
North Vancouver, BC V7H 0A6

Attention: Oliver Webbe
Email: oliver@darwin.ca

With a copy to:

Dentons Canada LLP
20th Floor, 250 Howe Street
Vancouver, BC V6C 3R8

Attention: Brigham H. Jagger
Email: brigham.jagger@dentons.com

(b) To the Lessor at:

The Corporation of the District of West Vancouver
750 – 17th Street
West Vancouver, BC V7V 3T3

Attention: Mark Panneton, Corporate Officer
Email: corporateofficer@westvancouver.ca

With a copy to:

Lidstone & Company
1300 - 128 West Pender Street
Vancouver, BC V6B 1R8

Attention: Don Lidstone
Email: lidstone@lidstone.ca

(c) To the Guarantor at:
Darwin Properties (Canada) Ltd.
404 -197 Forester Street
North Vancouver, BC V7H 0A6

Attention: Oliver Webbe
Email: oliver@darwin.ca

With a copy to:

Dentons Canada LLP
20th Floor, 250 Howe Street
Vancouver, BC V6C 3R8

Attention: Brigham H. Jagger
Email: brigham.jagger@dentons.com

or to such other address or email as may be designated by notice given by either party to the other. Any notice given will be conclusively deemed to have been given, in the case of delivery, on the day of actual delivery thereof and, in the case of email transmission, on the date transmitted if transmitted before 5:00 p.m. (Vancouver time) on a business day and otherwise on the next following business day.

10.5 Further Assurances. Each of the parties shall, at the cost and expense of the other, execute and deliver all such further documents and assurances and do such further acts and things as the other party may reasonably request from time to time to give full effect to this Offer.

10.6 Non-Assignment by Lessee. The Lessee may not assign its right under this Offer or to effect or allow a Change of Control without the prior written consent of the Lessor, such consent to be in the sole and absolute discretion of the Lessor, provided that the Lessee shall be entitled to assign its rights under this Offer without the consent of, but with notice to, the Lessor to:

- (a) an “affiliate” of the Lessee as that term is defined in the *Business Corporations Act* (British Columbia);
- (b) the general partner of the Lessee, provided that Oliver Webbe and/or David Webbe, or both combined, have a direct ownership interest of a minimum of 25% therein, or control at least 25% of the voting interest thereof, or both, and either Oliver Webbe or David Webbe is a director thereof; or
- (c) Darwin Properties (Gordon Avenue) Ltd., provided that Oliver Webbe and/or David Webbe, or both combined, have a direct ownership interest of a minimum of 25% therein, or control at least 25% of the voting interest thereof, or both, and either Oliver Webbe or David Webbe is a director thereof,

(each an “**Assignee**”) and no further assignment shall be permitted by an Assignee except with the consent of the Lessor as described above and pursuant to an agreement satisfactory to the Lessor under which the Assignee agrees to be bound by the terms hereof. In the event of any such assignment, the Lessee shall not be released from its obligations hereunder nor shall Darwin Properties (Canada) Ltd. be released from its obligations under the guarantee contemplated in Section 9.1.

In this Section 10.6, “**Change of Control**” means a transfer by sale, assignment or otherwise of any shares, voting rights or interests in the Lessee which results in a change of the party or parties who, as of the date hereof, exercise voting control of the Lessee. If there is a Change of Control or assignment, whether or not the Lessor consents as described above to such Change of Control or assignment, the Lessee shall pay the Lessor on the date of such Change of Control or assignment eighty per cent (80%) of any positive increase between (i) the Basic Rent, and (ii) the consideration received by the Lessee under such Change of Control or assignment. For greater certainty, if the consideration received by the Lessee under such Change of Control or assignment is less than the Basic Rent, then the Lessee shall not be required to pay the Lessor any amount pursuant to this section.

10.7 Direction of Granting of Lease by Lessee. On the Closing Date, the Lessee may direct the granting of the Lease without the consent of, but with notice to, the Lessor to any entity which is any of the following:

- (a) an “affiliate” of the Lessee or its general partner as that term is defined in the *Business Corporations Act* (British Columbia);
- (b) the general partner of the Lessee, provided that Oliver Webbe and/or David Webbe, or both combined, have a direct ownership interest of a minimum of 25% therein, or control at least 25% of the voting interest thereof, or both, and either Oliver Webbe or David Webbe is a director thereof; or
- (c) Darwin Properties (Gordon Avenue) Ltd., provided that Oliver Webbe and/or David Webbe, or both combined, have a direct ownership interest of a minimum of 25%

therein, or control at least 25% of the voting interest thereof, or both, and either Oliver Webbe or David Webbe is a director thereof,

but otherwise the Lessee shall not be entitled to direct the granting of the Lease without the prior written consent of the Lessor, such consent to be in the sole and absolute discretion of the Lessor. If the Lessee directs the granting of the Lease, whether or not the Lessor consents as described above to a granting of the Lease to an entity, the Lessee shall pay the Lessor on the date of such grant eighty per cent (80%) of any positive increase between (i) the Basic Rent, and (ii) the consideration received by the Lessee under such direction of granting of the Lease. For greater certainty, if the consideration received by the Lessee under such granting of the Lease is less than the Basic Rent, then the Lessee shall not be required to pay the Lessor any amount pursuant to this section.

10.8 Merger. Except as may be otherwise specifically set out elsewhere in this Offer and in this Section 10.8, the provisions of this Offer shall merge in the closing documents delivered on the Closing Date and thereafter only the provisions of the Lease executed by the Lessee, the documents executed pursuant to Section 3.1 (other than any assumption agreements executed by strata corporations) and to Section 3.2(i) and the Permitted Encumbrances shall apply between the Lessor and the Lessee.

10.9 Commission. The Lessor warrants and represents to the Lessee that there is no real estate commission in connection with the Lease and hereby agrees to indemnify the Lessee in respect of any and all real estate commissions arising through the Lessor in connection with the transaction contemplated herein. The Lessee also warrants and represents to the Lessor that there is no real estate commission payable in connection with the Lease and hereby agrees to indemnify the Lessor in respect of all real estate commissions arising through the Lessee in connection with the transaction contemplated herein.

10.10 Binding Effect. This Offer shall enure to the benefit of and be binding upon the parties hereto, their respective successors and permitted assigns.

10.11 Extended Meanings. Words imparting the singular number include the plural and vice versa and words imparting the masculine gender include the feminine and neuter genders.

10.12 Headings. The headings are for convenience of reference only and shall not affect the construction or interpretation of this Offer.

10.13 Applicable Law. This Offer shall be interpreted and enforced in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.

10.14 Business Day.

- (a) In this Offer, “**business day**” means a day other than a Saturday, Sunday, Easter Monday, Boxing Day, National Day for Truth and Reconciliation or statutory holiday in British Columbia.
- (b) If the date for the performance of any act or thing falls on a day which is a not a business day, then the date for the performance of such act or thing will be extended to the next business day.


10.15 Entire Agreement. This Offer, including the Schedules hereto and other agreements incorporated by reference, constitutes the entire agreement between the parties with respect to the subject matter hereof and contains all representations and warranties, covenants

and agreements of the respective parties, and may not be amended or modified except by an instrument in writing executed by both parties. This Offer supersedes all prior agreements, memoranda and negotiations between the parties with respect to the leasing of Parcel B.

10.16 Force Majeure. In the event of an excusable delay, the party being delayed will be entitled to extend the Closing Date from time to time for a period equal to the duration of the excusable delay, and the other party shall not be entitled to any compensation for any loss, injury, damage, or inconvenience whatsoever, including without limitation indirect or consequential loss, occasioned thereby, provided the party being delayed delivers notice in writing to the other party prior to the Closing Date detailing the date of the commencement and nature of the excusable delay (the “**Delay Notice**”) and provided further that the party being delayed uses its commercially reasonable efforts to render performance in a timely manner utilizing to such end commercially reasonable and available resources required in the circumstances. If the duration of an excusable delay results in the Closing Date being extended more than ninety (90) days from the original date for the Closing Date, the party receiving the Delay Notice may terminate this Offer forthwith, notwithstanding any other provision of this Offer, by giving written notice of termination to the other party, in which event the parties shall have no further obligations to one another and all deposits previously paid hereunder and remaining in trust in accordance with the terms of this Offer together with interest accrued thereon, shall be returned to the Lessee. As used herein “**excusable delay**” means the extent to which either the Lessor or the Lessee is unable to fulfill or is delayed or restricted in the performance or observance by such party of any obligation or act of such party hereunder which occurs as a consequence of or is attributable to strikes or labour or industrial disturbances (including lock-outs), civil disturbances, acts, orders, legislation, regulations, or directives of any governmental or other public authorities (including health authorities), acts of public enemies, war, riots, sabotage, blockades, embargoes, lightning, earthquakes, fire, storms, pandemics, epidemics, quarantines, health emergencies, hurricanes, floods, wash-outs, explosions or acts of God.

10.17 Schedules. The Schedules attached hereto form part of this Offer and are as follows:

Schedule A	District Lands
Schedule B	Lot Line Plan
Schedule C	Form of Lease (including Model Strata Lot Lease)
Schedule D	Permitted Encumbrances
Schedule E	Certificate as to GST Registered Status
Schedule F	Parent Guarantee

10.18 Duration. This Offer shall be irrevocably open for acceptance up to 5:00 p.m. (Vancouver time) on  2022 and upon acceptance by the Lessor signing and delivering a copy hereof to the Lessee there shall be a binding agreement to lease Parcel B on the terms and conditions herein set forth. The Lessee understands that neither the preparation by the Lessor of this form of offer nor any negotiations entered into by the Lessor in connection with its submission shall constitute or imply any commitment by the Lessor unless this Offer has been accepted in writing by the Lessor in accordance with the terms hereof.

10.19 Delegation. A reference in this Offer to approval or consent of the Lessor shall be a reference to approval by the Lessor’s Chief Administrative Officer or their designate. Nothing in this section precludes the Chief Administrative Officer from referring an approval or consent to the Lessor’s Council.

10.20 Powers Preserved. Except as expressly set out in this Offer, nothing contained or implied in this Offer shall fetter in any way the discretion of the District of West Vancouver or the Council of the District of West Vancouver. Further, nothing contained or implied in this Offer shall derogate from the obligations of the Lessee under any other agreement with the District of West Vancouver or, if the District of West Vancouver so elects, prejudice or affect the District of West Vancouver's rights, powers duties or obligations in the exercise of its functions pursuant to the *Community Charter* or the *Local Government Act*, as amended or replaced from time to time, or act to fetter or otherwise affect the District of West Vancouver's discretion, and the rights, powers, duties and obligations of the District of West Vancouver under all public and private statutes, by-laws, orders and regulations, which may be, if the District of West Vancouver so elects, as fully and effectively exercised in relation to the Project or Parcel B as if this Offer had not been executed and delivered by the Lessee and the District of West Vancouver.

IN WITNESS WHEREOF the Lessee has executed this Offer as of the day and year first above written.

2195 GORDON AVENUE LIMITED)
PARTNERSHIP, by its general partner,)
2195 GORDON AVENUE GP LTD.)
by its duly authorized signatory:)
)
)
_____)
Oliver Webbe)

LESSOR'S ACCEPTANCE OF OFFER

For and in consideration of the covenants and agreements of the Lessee contained in this Offer, the Lessor hereby accepts this Offer and agrees to complete the Lease of Parcel B on the terms and conditions set out herein.

DATED this ____ day of _____, 2022.

THE CORPORATION OF THE DISTRICT)
OF WEST VANCOUVER)
by its duly authorized signatories:)
)
_____)
Authorized Signatory)
)
_____)
Authorized Signatory)

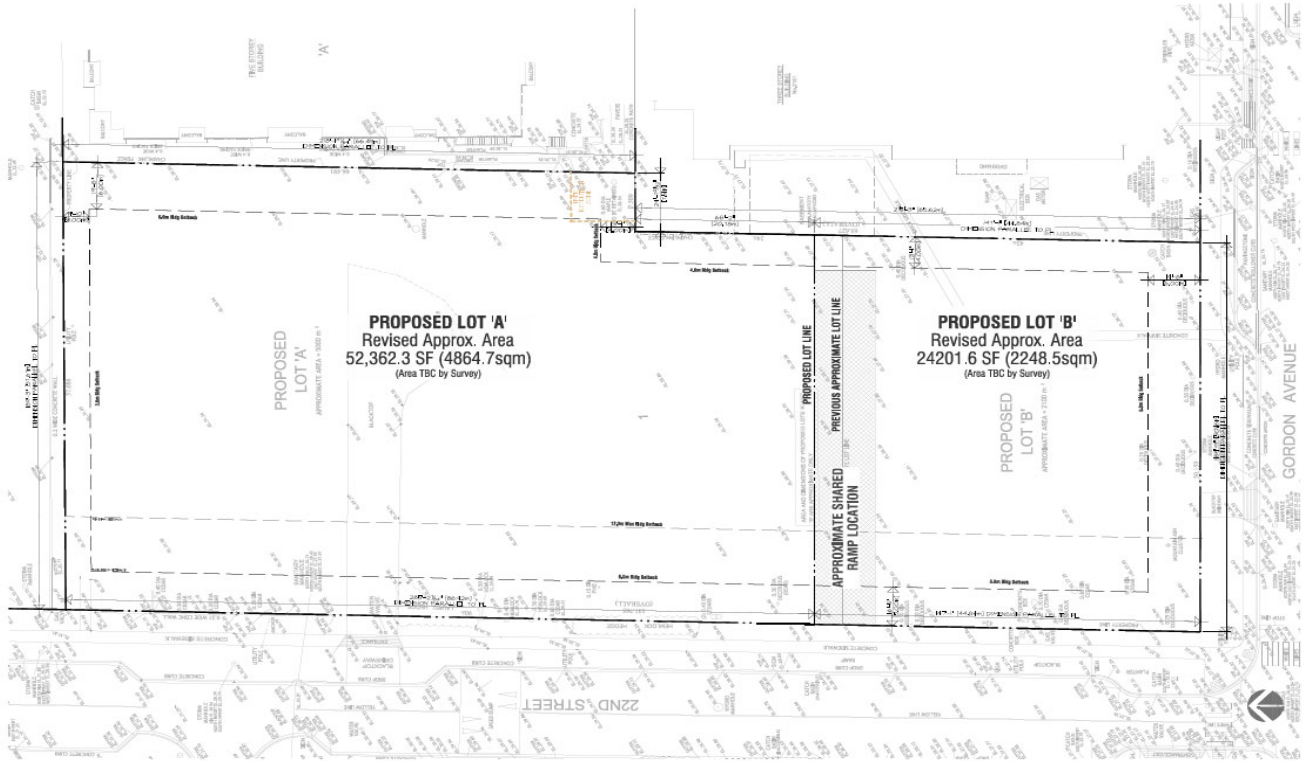
SCHEDULE A TO OFFER

LEGAL DESCRIPTION OF THE DISTRICT LANDS

CIVIC	PID	LEGAL	Defined Term in this Offer
2195 Gordon Avenue, West Vancouver, BC	024-158-259	LOT 1 DISTRICT LOT 775 GROUP 1 NEW WESTMINSTER DISTRICT PLAN LMP 38133	District Lands

SCHEDULE B TO OFFER

LOT LINE PLAN



December 15, 2021
Village West
Gordon Ave & 22nd Street
West Vancouver, BC



Parcel Plan

Scale: 1/8" = 1'-0"

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SCHEDULE C TO OFFER
FORM OF LEASE
(INCLUDING MODEL STRATA LOT LEASE)

SCHEDULE D TO OFFER

PERMITTED ENCUMBRANCES

1. The rights reserved to or vested in or deemed to be reserved or vested in any governmental authority pursuant to the Crown Grant applicable to Parcel B or to any applicable statutory provisions.
2. Applicable development/subdivision charges in favour of the District relating to the Project and/or Parcel B.
3. The following legal notations, liens, charges and encumbrances registered against Parcel B:
 - a. Legal Notations:

Nil.
 - b. Charges, Liens and Interests:
 - i. Cross Access Agreement; and
 - ii. No Build Covenant

SCHEDULE E TO OFFER
GOODS AND SERVICES TAX CERTIFICATE

FORM 221(2)(b/c)

CERTIFICATE AS TO GST REGISTERED STATUS OF PURCHASER
(Paragraphs 221(2)(b) and (c))

FROM: DARWIN PROPERTIES (CANADA) LTD., or its permitted assignee
(the "Lessee")

TO: THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER
(the "Lessor")

RE: The lands situate at _____, West Vancouver, British Columbia
and more particularly known and described as:

(the "Property")

The Lessee hereby certifies to the Lessor pursuant to paragraphs 221(2)(b) and (c) of the
Excise Tax Act (the "Act") that the Lessee:

is registered for GST purposes, its registration number is _____ and
the Lessee will account for the GST payable in respect of the Lease of the Property in
accordance with the Act.

The Lessee acknowledges that the Lessor is relying on this Certificate in connection with the
Lease of the Property.

Each term that is used in the Certificate and that is defined in, and for the purposes of, Part IX of
the Act has the meaning assigned to it in Part IX of the Act.

DATED: _____.

Per: _____
Authorized Signatory

SCHEDULE F

GUARANTEE

MADE BY: **DARWIN PROPERTIES (CANADA) LTD.** (the "Guarantor")

TO: **THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER** (the "Lessor")

For One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged by the Guarantor, the Guarantor does hereby guarantee the performance of all obligations (the "**Contractual Obligations**") of 2195 Gordon Avenue Limited Partnership and of any permitted assignee or transferee thereof (the "**Lessee**") to the Lessor contained in the:

- (a) Offer to Lease Agreement dated for reference [REDACTED], 2022 (the "**OTL**") between the Lessee and the Lessor in respect of the lease of Parcel B (as defined in the OTL); and
- (b) the Lease between the Lessee and the Lessor delivered by the Lessee to the Lessor with the OTL, in the form and with the content attached to the OTL,

and will cause the Lessee to duly keep, observe and perform each of the Contractual Obligations and, in the event of default by the Lessee under the OTL, the Guarantor will keep, observe and perform each of the Contractual Obligations on the Lessee's part to be observed and performed.

THE UNDERSIGNED FURTHER AGREES WITH THE LESSOR AS FOLLOWS:

- (a) This Guarantee will be a continuing guarantee and will cover all of the Contractual Obligations of the Lessee to the Lessor under the OTL as if the Guarantor were the "Lessee" named in the OTL.
- (b) This Guarantee will remain in full force and effect, notwithstanding any change of name, amalgamation, merger or change of status of the Guarantor or the Lessee or any assignment of the OTL by the Lessee to another entity (as contemplated in the OTL).
- (c) The Guarantor acknowledges that it is familiar with the OTL and that it fully understands the extent of the Contractual Obligations.
- (d) This Guarantee automatically terminates and the Lessor shall be deemed to have released the Guarantor from its obligations under this Guarantee on the date that occupancy permits have been issued by the Corporation of the District of West Vancouver for the entirety of the Project (as defined in the OTL).
- (e) This Guarantee will be governed by the laws of the Province of British Columbia, and the Guarantor hereby submits to the jurisdiction of the courts thereof in any action or proceeding in respect of the enforcement of same.
- (f) All notices or demands required or permitted to be given to the Guarantor hereunder will be in writing and will be deemed duly served when delivered personally or by email to the Guarantor at the address specified in Section 10.4 of the OTL, or when deposited in the mail, postage prepaid, certified or registered, return receipt requested, addressed to the Guarantor.
- (g) Either party will have the right to designate in writing by notice served as above, a different or additional address to which notice is to be delivered or mailed.

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- (h) This Guarantee will extend to and enure to the benefit of the Lessor and its successors and assigns.

IN WITNESS WHEREOF the Guarantor by its duly authorized signatories has executed this Guarantee at North Vancouver, British Columbia as of the _____ day of _____, 2022.

DARWIN PROPERTIES (CANADA) LTD.

Per: Oliver Webbe

APPENDIX 5

TERMS OF INSTRUMENT – PART 2

GROUND LEASE

**GORDON AVENUE
(PARCEL B, PLAN ●)**

BETWEEN

THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER

750 17th Street
West Vancouver, BC V7V 3T3

AND:

●
#404 – 197 Forester Street
North Vancouver, BC V7H 0A6

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Schedule A: Permitted Encumbrances

Schedule B: Model Strata Lot Lease

Schedule C: Mortgagee Agreement

**GORDON AVENUE PROJECT
WEST VANCOUVER, BRITISH COLUMBIA**

PARCEL B, PLAN ●

GROUND LEASE

THIS AGREEMENT (“this Lease”), made with effect as of the ● day of ●, 2022 (the “Effective Date”)

BETWEEN:

THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER
750 17th Street
West Vancouver, BC V7V 3T3

(“Lessor”)

AND:

●
#404 – 197 Forester Street
North Vancouver, BC V7H 0A6

(“Lessee”)

WITNESSES THAT WHEREAS:

- A. The Lessor is the owner of the Lands (hereinafter defined), together with all improvements existing on the Lands on the Effective Date; and
- B. The Lessor has agreed to lease to the Lessee the Lands for the Term (hereinafter defined) so that the Lessee may erect the Buildings (hereinafter defined) on the Lands, convert this Lease under Section 203 of the *Strata Property Act*, if applicable, and use, occupy and enjoy the Lands and the Buildings erected on the Lands for the Term of this Lease, all subject to the terms and conditions contained in this Lease,

NOW THEREFORE THIS LEASE WITNESSES that in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Lessee to be paid, observed and performed, the Lessor and the Lessee hereby agree as follows:

**ARTICLE 1
INTERPRETATION**

1.1 For the purposes of this Lease

- (a) **“Additional Rent”** means the amounts, other than Basic Rent, which the Lessee shall pay under Sections 6.10, 6.12, and 7.3, together with any other additional amounts which shall be added under this Lease to and made part of Additional Rent;

- (b) **"Affiliate"** means any entity, which is at the time material to this Lease, is Affiliated with the Lessee or with any entity Affiliated therewith (including any Affiliate permitted to hold registered title to the interests of the Lessee under this Lease as trustee, agent or nominee for any such Affiliate);
- (c) **"Affiliated"** means (with respect to any entity material to the interests of the Lessee under this Lease) wholly owned, controlled, under substantive common control or ownership or otherwise affiliated [as such term is defined in the *Business Corporations Act* (British Columbia)];
- (d) **"Applicable Laws"** means all provisions of law including, without limitation, municipal, regional, provincial and federal legislative enactments including, without limitation, all police, fire and sanitary regulations, standards of maintenance, zoning and building bylaws, and any municipal, regional, provincial, federal, other governmental regulations of the District, including, without limitation, the Land Use Requirements which relate to the construction of the Buildings, to the equipment and maintenance of the Buildings, to the operation, occupation and use of the Buildings or the Lands to the extent that the Lessee operates, occupies and uses the Buildings or the Lands whether by subletting the same or any part thereof or otherwise, and to the making of any repairs, replacements, alterations, additions, changes, substitutions or improvements of or to the Buildings the Lands or any part thereof;
- (e) **"Approving Officer"** means the municipal approving officer appointed by the District's Council under Section 77 of the *Land Title Act*, and the officer's deputy and any other individual appointed or designated by the District's Council to act in the place of the officer from time to time;
- (f) **"Architect"** means the architect the Lessee may appoint from time to time, who shall be a member in good standing of the Architectural Institute of British Columbia;
- (g) **"Basic Rent"** has the meaning ascribed hereto in Section 3.1 of this Lease;
- (h) **"Builders Lien Act"** means the *Builders Lien Act*, S.B.C. 1997, Ch. 45, as amended or replaced from time to time;
- (i) **"Building"** means a structure sheltering a use that is constructed on the Lands by the Lessee under this Lease, including without limitation, hard landscaping, together with all replacements, alterations, additions, changes, substitutions, improvements or repairs and other improvements from time to time constructed on or affixed or appurtenant to the Lands, and **"Buildings"** will have a corresponding meaning but pluralized;
- (j) **"Building Occupants"** means the persons who occupy a Building from time to time, whether such occupation is for residential or commercial purposes;
- (k) **"Building Permit"** means a building permit issued by the District to the Lessee pursuant to an application submitted by or on behalf of the Lessee, with respect to the construction of a Building on the Lands, as such permit may be amended, extended or replaced from time to time;

- (l) **“Business Day”** means any day which is not a Saturday, Sunday or a day observed as a holiday under the Applicable Laws in the Province of British Columbia;
- (m) **“Certificate of Occupancy”** means a document issued by the District in its capacity as a governmental authority certifying compliance of any Building constructed on the Lands as part of the Project with applicable building codes and other laws, and indicating such Building or Buildings to be in a condition suitable for occupancy, but does not include any such document issued for any sales centre in connection with the Project;
- (n) **“Claims”** has the meaning ascribed thereto in Section 13.4;
- (o) **“Commencement Date”** means the earlier of:
 - (i) the date of the District’s issuance of the first Certificate of Occupancy; or
 - (ii) the date which is 60 months following the Effective Date;
- (p) **“Commencement of Construction”** means:
 - (i) the District has issued a Building Permit to the Lessee for a Building on the Lands, and
 - (ii) the Architect has certified that construction of the foundation and footings of the Buildings has been commenced by the Lessee;
- (q) **“Common Facility”** has the same meaning as under the *Strata Property Act*;
- (r) **“Common Property”** has the same meaning as under the *Strata Property Act*;
- (s) **“Deposit”** has the meaning ascribed thereto in Section 3.1;
- (t) **“Development Permit”** means a development permit issued by the District to the Lessee pursuant to an application submitted to the District by or on behalf of the Lessee, with respect to the development of a Building on the Lands, as such permit may be amended, extended or replaced from time to time;
- (u) **“Development Procedures Bylaw”** means Development Procedures Bylaw No. 4940, 2017, as amended or replaced on or after the Effective Date;
- (v) **“Dispute Notice”** has the meaning given to such term in Section 21.1(c);
- (w) **“District”** means:
 - (i) the geographical area within the boundaries of the District of West Vancouver; or
 - (ii) The Corporation of the District of West Vancouver, acting in its capacity as a municipal government and not as the Lessor,as the context may require;

- (x) **"District's Council"** means the council of The Corporation of the District of West Vancouver;
- (y) **"Effective Date"** shall have the meaning given to such term on page 1 hereof;
- (z) **"Environmental Contaminants"** means any contaminants, pollutants, hazardous, corrosive or toxic substances, flammable materials, explosive materials, radioactive materials, dangerous goods, microwaves, waste, urea formaldehyde, asbestos, noxious substances, compounds known as chlorobiphenyls, special waste, and any other substance or material, in quantities or concentrations exceeding allowable limits prescribed by Environmental Laws, the storage, manufacture, disposal, treatment, generation, use, transport, remediation, or release of which into the environment is prohibited, regulated, controlled, or licensed under Environmental Laws;
- (aa) **"Environmental Laws"** means any laws, statutes, regulations, orders, bylaws, permits or lawful requirements of any governmental authority with respect to environmental protection, or regulating, controlling, licensing, or prohibiting Environmental Contaminants;
- (bb) **"Home Owner Protection Act"** has the meaning given to such term in Section 29.1;
- (cc) **"Home Warranty Program"** has the meaning given to such term in Section 29.1;
- (dd) **"Indemnified Parties"** means the Lessor, in its capacity as landlord and owner of the Lands, the District as a government, the members of the District's Council, and the District's officers, employees, volunteers, contractors, solicitors, agents, successors and assigns;
- (ee) **"Initial Notice"** has the meaning given to such term in Section 21.1(a);
- (ff) **"Land Use Requirements"** means a provision of a bylaw, permit, plan, policy, guideline, regulation, resolution, order or any other similar document enacted or passed by the Province of British Columbia or the District's Council, including the Development Procedures Bylaw No. 4940, 2017, Official Community Plan Bylaw No. 4985, 2018, Zoning Bylaw No. 4662, 2010, and the Development Cost Charge Bylaw No. 3801, 1993, as amended or replaced from time to time before or after the date of this Lease, and every other applicable District bylaw, and all other lawful District, Approving Officer or provincial requirements governing land use and the construction, renovation, maintenance, repair and replacement of a Building on the Lands;
- (gg) **"Lands"** means those lands in the District of West Vancouver, in the Province of British Columbia, more particularly described in Part 1 of this General Instrument;
- (hh) **"Leasehold Strata Plan"** means a strata plan deposited in the LTO under the *Strata Property Act* under which the land included in the strata plan is subject to this Lease;
- (ii) **"Lessee's Solicitors"** means Dentons Canada LLP or such other lawyer or firm of lawyers as the Lessee may, by delivery of written notice to the Lessor at any time and from time to time, appoint to act as legal counsel to the Lessee in connection with any matter arising under or in relation to this Lease;

- (jj) **“Lessor’s Solicitors”** means Lidstone & Company Law Corporation or such other lawyer or firm of lawyers as the Lessor may, by delivery of written notice to the Lessee at any time and from time to time, appoint to act as legal counsel to the Lessor in connection with any matter arising under or in relation to this Lease;
- (kk) **“LTO”** means the Land Title Office;
- (ll) **“Mortgage”** means a mortgage or mortgages upon or in respect of and specifically charging the leasehold interest of the Lessee in the Lands and a Building on the Lands and includes a debenture or deed of trust or mortgage to secure a bond or debenture, and any assignment of rents made to the Mortgagee as security;
- (mm) **“Mortgagee”** means a mortgagee under any Mortgage;
- (nn) **“No Build Covenant”** means the covenant under Section 219 of the *Land Title Act* between the District, in its capacity as a governmental authority, and the Lessor, as the fee simple owner of Parcel B and approved by 2195 Gordon Avenue Limited Partnership in accordance with the Offer to Lease between the Lessor and 2195 Gordon Avenue Limited Partnership dated for reference ●, 2022, restricting the use of Parcel B except in accordance with terms and conditions of the no build covenant;
- (oo) **“Official Community Plan”** means the Official Community Plan Bylaw 2018 No 4985 as amended or replaced from time to time;
- (pp) **“Owner”** has the same meaning as under the *Strata Property Act*;
- (qq) **“Parcel A”** means [NTD: Insert legal description of Parcel A (Kiwanis lands) once subdivision has been registered];
- (rr) **“Permitted Encumbrances”** means the charges and legal notations set out or described in Schedule A;
- (ss) **“Prime Rate”** means the annual percentage rate of interest established from time to time by the Royal Bank of Canada, Main Branch, Vancouver, British Columbia, or any successor bank, for loans to customers in Canada and designated by the Royal Bank of Canada as the prime rate, or any rate which may replace the prime rate in the future as a method for determining rates of interest to be charged;
- (tt) **“Project”** means the Lessee’s proposed development on the Lands that consists of an approximately eight (8) storey leasehold residential strata development project;
- (uu) **“Property Taxes”** means all taxes, rates, duties, charges and assessments due and owing during the Term, including school and regional district taxes and charges, local service area rates and other charges which now are or shall at any time during the Term be levied, rated, charged or assessed against the Lands, the Buildings, all other structures, all machinery, equipment, facilities and other property of any nature whatsoever thereon and therein, whether such taxes, rates, duties, charges and assessments are charged by any municipal, parliamentary, legislative, regional, school or other authority including the District during the Term;

- (vv) **"Release"** means any release, discharge, emission, deposit, issuance, spray, escape, spill, or leak and shall also have the respective corresponding meanings (if any) given under Environmental Laws;
- (ww) **"Rent"** means the Basic Rent, Additional Rent and any other amounts the Lessee must pay to the Lessor under this Lease;
- (xx) **"Special Resolution"** means a special resolution passed by the Strata Corporation under the *Strata Property Act*;
- (yy) **"Strata Corporation"** means the corporation created under the provisions of the *Strata Property Act* on the deposit of the Leasehold Strata Plan in the LTO;
- (zz) **"Strata Lot"** means a strata lot as shown on a Leasehold Strata Plan;
- (aaa) **"Strata Property Act"** means the *Strata Property Act*, S.B.C. 1998, Ch. 43, and amendments thereto, including without limitation, the *Strata Property Amendment Act*, S.B.C. 1999, Ch. 21 together with all regulations passed from time to time pursuant thereto, or, any successor legislation in effect from time to time;
- (bbb) **"Substantial Completion"** and **"Substantially Completed"** in respect of a Building means:
 - (i) the District has issued a Certificate of Occupancy therefor; or
 - (ii) the Architect or engineer of the Lessee has issued a certificate to the Lessor, signed and sealed by the Architect or engineer, certifying that:
 - (A) the Buildings and development servicing located solely on the Lands which is required pursuant to the servicing agreement between the Lessee and the District with respect to the Buildings are substantially complete in all material respects in a proper and workmanlike manner and in accordance with the applicable plans, specifications and supporting documents submitted to and accepted by the District upon which the issuance by the District of the Development Permit and any Building Permits for any Buildings has been based, except for deficiencies, the correction of which, in the opinion of the Architect or engineer or deficiencies communicated in writing by the District to the Lessee is adequately ensured;
 - (B) all applicable building and development servicing requirements and regulations of the District with respect to the Buildings (for greater certainty, not including any development servicing requirements and regulations for any servicing matters that are not located solely on the Lands) have been complied with by the Lessee except for deficiencies, the correction of which, in the opinion of the Architect or engineer or deficiencies communicated by the District to the Lessee is adequately ensured; and
 - (C) the Buildings are ready for occupancy,

for the purposes other than Section 4.3(b), Substantial Completion may be determined in respect of portions of the Buildings;

- (ccc) **“Substantial Destruction”** means any event of damage to or destruction of the Building which, in the opinion of the Architect, or an insurance adjustor or quantity surveyor qualified to practice in the Province of British Columbia and engaged by Lessee or by any Mortgagee or by any insurer of the Building, would require the repair or reconstruction of at least 50% of the Building;
- (ddd) **“Surrender Notice”** means a written notice delivered by the Lessee (or by any Mortgagee on behalf of or upon the authority of the Lessee) to the Lessor, electing to surrender and terminate this Lease as contemplated in Section 8.2(b);
- (eee) **“Term”** means, collectively, the period commencing on the Effective Date and ending on the day before the Commencement Date plus the 99 year period commencing on the Commencement Date;
- (fff) **“Unavoidable Delay”** means any strike, lock-out or other labour dispute, material or labour shortage not within the control of the Lessee, stop work order issued by any court or tribunal of competent jurisdiction or other governmental order or embargo (provided that such order was not issued as the result of any act or fault of the Lessee or of any one employed by it directly or indirectly), fire or explosion, flood, wind, water, earthquake, snowfall, inclement weather affecting construction conditions, act of God, epidemic, pandemic or other similar circumstances beyond the reasonable control of the Lessee and not avoidable by the exercise of commercially reasonable effort or foresight by the Lessee;
- (ggg) **“Unit Entitlement”** has the same meaning as under the *Strata Property Act*; and
- (hhh) **“Zoning Bylaw”** means Zoning Bylaw No. 4662, 2010, as amended or replaced from time to time before or during the Term of this Lease, including as amended by the Zoning Bylaw Amendment.

1.2 In this Lease:

- (a) reference to the singular includes a reference to the plural, and vice versa, as the context requires;
- (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Lease;
- (c) reference to a particular numbered section or article, or to a particular lettered schedule, is a reference to the correspondingly numbered or lettered article, section or schedule of this Lease;
- (d) if a word or expression is defined in this Lease, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- (e) reference to any enactment includes any regulation, orders or directives made under the authority of that enactment;

- (f) reference to an enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced from time to time during the Term, unless otherwise expressly provided;
 - (g) all provisions are to be interpreted as always speaking;
 - (h) reference to a "party" is a reference to a party to this Lease and to its respective successors, permitted assigns, trustees, administrators and receivers;
 - (i) reference to a "day", "month", "quarter" or "year" is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided; and
 - (j) the word "including" is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word "including".
- 1.3 Every provision of this Lease is a condition as well as covenant as though the words specifically expressing or importing a covenant or condition were used in each separate provision.
- 1.4 The following schedules are attached to and form part of this Lease:
- Schedule A: Permitted Encumbrances
 - Schedule B: Model Strata Lot Lease
 - Schedule C: Mortgagee Agreement
- 1.5 Nothing contained or implied in this Lease will prejudice or affect the District's rights, powers or duties in the exercise of its functions as a municipal government under any applicable enactments.

ARTICLE 2

DEMISE AND POSSESSION OF THE LANDS

2.1 Demise and Possession

The Lessor leases to the Lessee, and the Lessee leases from the Lessor, the Lands for the Term, subject to the terms, conditions, covenants and other provisions of this Lease.

2.2 Vacant Possession

The Lessor covenants to deliver vacant possession of the Lands to the Lessee on the Effective Date.

ARTICLE 3 PAYMENT OF RENT AND TAXES

3.1 Basic Rent

The Lessee covenants and agrees to pay to the Lessor, on the Effective Date and as net basic rent, the sum of \$22,195,000.00 (the “**Basic Rent**”) of which a deposit in the amount of \$600,000.00 (the “**Deposit**”) has been paid by the Lessee to the Lessor’s Solicitors, in trust, prior to the Effective Date, and which Deposit shall be applied as a credit against payment of Basic Rent on the Effective Date.

3.2 Payments

Any payment of any monies by the Lessee to the Lessor required under this Lease must be:

- (a) paid to the Lessor in lawful currency of Canada;
- (b) applied toward amounts expressed to be outstanding under this Lease, in the manner stipulated by the Lessor; and
- (c) deemed to be Rent, in partial consideration for which this Lease has been entered into, and will be payable and recoverable as Rent, such that the Lessor will have all rights and remedies against the Lessee for default in making the payment which may not be expressly designated as Rent as the Lessor has for default in payment of Rent.

3.3 Authorization to Lessor’s Solicitors

The Lessor and Lessee hereby irrevocably authorize and direct the Lessor’s Solicitors to hold and pay the Deposit to the Lessor on the Effective Date as a credit against payment of Basic Rent as contemplated in Section 3.1, without further notice to, or the consent of, the parties hereto.

3.4 Net Lease

Unless otherwise expressly stipulated to the contrary in this Lease, all Rent required to be paid by the Lessee hereunder will be paid without any deduction, abatement or set-off whatsoever, it being the intention of the Lessor and Lessee that:

- (a) all expenses, costs, payments and disbursements incurred in respect of the Lands, any Buildings and any other improvements of the Lands or for any other matter or thing affecting the Lands, shall be borne by the Lessee;
- (b) the Basic Rent paid on the Effective Date will be absolutely net to the Lessor and free of all abatements, set-off or deduction or Property Taxes, charges, rates, assessments, expenses, costs, payments or out-goings of every nature arising from or related to the Lands, any Buildings or any other improvements on the Lands; and
- (c) the Lessee will pay or cause to be paid all Property Taxes, charges, rates, assessments, expenses, costs, payments and out-goings as provided in this Lease.

3.5 Interest on Amounts in Arrears

If any Rent payable to the Lessor is in arrears, such amount will bear interest, including interest on overdue interest, at the Prime Rate plus 6% per annum calculated monthly not in advance from the date due until paid, irrespective of whether or not the Lessor has demanded payment. The Lessor will have all the remedies for the collection of such interest, if unpaid after demand, as in the case of Rent in arrears, but this stipulation for interest will not prejudice or affect any other remedy of the Lessor under this Lease or under enactments, provided that this Section 3.5 will not apply to the Lessee's failure to pay Property Taxes under Sections 3.6 or 3.7 when due.

If a court declares or holds the Prime Rate to be void or unenforceable for any reason including uncertainty, then the rate of interest payable on amounts in arrears hereunder will be 18% per annum calculated monthly not in advance from the date due until paid.

3.6 Payment of Property Taxes if Lands are Taxable

Save as otherwise provided in Section 3.9, the Lessee will in each and every year during the Term not later than the day immediately preceding the date or dates on which Property Taxes imposed upon real property within the District of West Vancouver become due and payable, whether monthly, quarterly, twice-yearly or otherwise, pay and discharge or cause to be paid and discharged all Property Taxes, and will indemnify and keep indemnified the Lessor from and against payment of all losses, costs, charges and expenses occasioned by or arising from any and all such Property Taxes suffered by the Lessor may be collected by the Lessor as Additional Rent with all rights of distress and otherwise as reserved to the Lessor in respect of rent in arrears.

The Lessee further covenants and agrees that during the Term, it will deliver to the Lessor for inspection receipts for payments of all Property Taxes which were due and payable during the Term within 14 days following receipt by the Lessee of each of such receipts for payment. The Lessor will, not later than 14 days following receipt of any assessment notices delivered to the Lessor by any taxing authority, relating to the Lands, the Buildings or any other structures, any machinery, equipment, facilities and other property of any nature, forward a copy to the Lessee. The Lessee will have the right from time to time to appeal any assessment of the Lands or the Buildings or any Property Taxes referred to in this Section 3.6 if the appeal is at the sole cost of the Lessee.

For greater certainty, the Lessee will be responsible for the payment of Property Taxes as referred to in this Section 3.6 from the Effective Date.

3.7 Payment of Equivalent to Property Taxes if Lands are Exempt from Tax

The Lessee covenants and agrees with the Lessor that if during the Term, the Lands, the Buildings, all other structures, all machinery, equipment and facilities and other property of any nature, are by the provisions of any municipal, parliamentary, legislative enactment exempt from Property Taxes in whole or in part by reason of the Lessor's ownership of the Lands and they would otherwise have been subject to Property Taxes, then the Lessee will in each and every year during the Term that such exemption occurs pay to the Lessor as Additional Rent in like manner and time as Property Taxes are to be paid under Section 3.6, an amount equal to the amount that but for such exemption would have been paid by the Lessee under Section 3.6 for Property Taxes.

For this purpose in each year during the Term the following provisions apply:

- (a) If the District enacts a rates bylaw or preparation of the real property tax roll for the current year providing for the payment of Property Taxes imposed or to be imposed upon real property within the District, the Lessor shall deliver to the Lessee an advance tax statement or statements of the amount or amounts determined in accordance with the bylaw from time to time in respect of the Lands, the Buildings and all other structures, all machinery and equipment and facilities and other property; and
- (b) after the passing of a rates bylaw by the District establishing the rate to be levied on real property with the District for the current year, the Lessor will determine the Additional Rent by applying the rates established by the rates bylaw to all, or such portion of the assessed value of the Lands, the Buildings and all other structures, all machinery, equipment, and facilities and other property as the Property Tax rates are applied to other taxpayers in the District in like case, and the Lessor will deliver to the Lessee a statement of the amount payable under this Section 3.7 after deducting all Property Taxes paid in advance for the current year.

The Lessee will have the right from time to time to appeal any assessment of the Lands or Buildings or any equivalent to Property Tax as referred to in this Section 3.7, if the appeal will be at the sole cost of the Lessee.

3.8 District Fees and Charges

Nothing in this Lease relieves the Lessee from the obligation to pay the District any applicable fees, charges, levies and other payments required under any District bylaws or provincial statute or regulation in respect of the Lands and any Buildings or other improvements on the Lands.

3.9 Delinquent Taxes

If the Lessee in any year during the Term fails to pay Property Taxes, fees or other payments under any of Sections 3.6 through 3.10 when due, the Lessee will only be obligated to pay the interest and penalties as would be payable by other taxpayers in the District.

3.10 Penalties Levied under District Bylaws

The Lessee covenants with the Lessor to pay for or cause to be paid when due any fine validly imposed by the District for acts or things done in contravention of, or in violation of, any provision of any District bylaws or agreements registered in the LTO in respect of the Lands and any Buildings or other improvements on the Lands.

ARTICLE 4 CONSTRUCTION

4.1 Lessee to Construct Buildings

After the District has issued the Development Permit, the Lessee will as soon as is reasonably practicable apply to the District for a Building Permit (to the extent not already obtained or applied for with respect to the Building or Buildings to be constructed on the Lands), which application must comply with the Land Use Requirements. Upon receipt of a Building Permit from the District, the Lessee shall construct the Building, together with other facilities ancillary thereto and connected therewith on the Lands

expeditiously and in good workmanlike manner in substantial accordance with the drawings, elevations, specifications (including, without limitation, the materials to be used), location on the Lands and exterior decoration and design all upon which the issuance of the Development Permit and the Building Permit by the District are based, and in compliance with the requirements of any applicable Development Permit and Building Permit.

4.2 Fire and Liability Insurance during Construction of Buildings

- (a) The Lessee must effect or must cause its contractor or contractors to effect prior to the Commencement of Construction of the Buildings, or any of them, and must maintain and keep in force until the insurance required under Article 6 has been effected, insurance:
 - (i) protecting both of the Lessee and the Lessor and the Lessor's officers and employees (without any rights of cross claim or subrogation against the Lessor) against claims for personal injury, death or property damage or other third party or public liability claims arising from any accident or occurrence upon, in or about the Lands and from any cause, including, without limitation, the risks occasioned by the construction of the Buildings, and to an amount being not less than Ten Million Dollars (\$10,000,000.00) per occurrence, for any personal injury, death, property or other claims in respect of any one accident or occurrence; and
 - (ii) protecting the Lessee from loss or damage (without any rights of cross-claim or subrogation against the Lessor) to the Buildings and all fixtures, equipment, improvements and building materials on the Lands from time to time both during and after construction (but which may be by policies effected from time to time covering the risk during different phases of construction of the Buildings) against fire, earthquake and all other perils from time to time customarily included in the usual all risks builders' risk form of policy applicable to similar properties during the construction and effected in the Province of British Columbia by prudent owners, and such other perils as the Lessor may reasonably require to be insured against to the full insurable value thereof at all times and in any event in the amount sufficient to prevent the Lessor or the Lessee being deemed co-insurer.
- (b) The proceeds of insurance which may become payable under any policy of insurance effected under this Section 4.2 will be payable to the Mortgagee if so required by any Mortgagee, or to the Lessee if there is no Mortgagee and will be available to the Lessee to finance any required repair and reconstruction.
- (c) Sections 6.3, 6.4, 6.5, 6.8, 6.10, 6.11 and 6.12 respecting insurance will apply to the insurance during construction of the Buildings required by this Section 4.2.

4.3 Deadlines for Commencement of Construction and Substantial Completion of Buildings

The Lessee covenants and agrees with the Lessor that, subject always to Section 10.1 and Section 17.2:

- (a) Commencement of Construction shall take place on or before the day which is 12 months after the Effective Date; and

- (b) the Building and any District works, services and facilities required under the Development Permit or Building Permit shall be Substantially Completed as certified by the Architect on or before the day which is the fifth (5th) anniversary of the Effective Date.

4.4 Termination Where Lessee Defaults in Commencement of Construction or Substantial Completion

- (a) Subject to Section 4.4(b) and Section 10.1, if Commencement of Construction or Substantial Completion of the Buildings does not occur by the dates set forth in Section 4.3 and such default continues for a period of 60 days after written notice of intention to terminate this Lease by reason of such default has been given by the Lessor to the Lessee, the Lessor shall have the right and option to terminate this Lease and the provisions of Section 19.1 shall apply save only as modified by Section 4.4(c) and Section 4.4(d).
- (b) The Lessor will not be entitled to terminate this Lease in respect of a delay in the Commencement of Construction, if the Lessee has applied for and is actively and in good faith pursuing issuance of an excavation permit or a Building Permit with respect to the Building or Buildings to be constructed on the Lands or, in respect of a delay of Substantial Completion, has applied for and is actively and in good faith pursuing issuance of a Certificate of Occupancy with respect to the Building or Buildings on the Lands.
- (c) In the event of a dispute between the Lessor and the Lessee as to whether or not the Lessor is entitled to terminate this Lease pursuant to the provisions of this Section 4.4 the Lessor and the Lessee agree the provisions of Article 21 shall apply to such dispute.
- (d) If the Lessor terminates this Lease under this Section 4.4 then:
 - (i) the Lessor shall be entitled to retain as liquidated damages and not as a penalty, an amount equal to 25% of the Basic Rent and, for greater certainty, the balance of the Basic Rent shall be refunded to the Lessee within 60 days of such termination; and
 - (ii) the Lessor in its sole discretion may by prior notice in writing require the Lessee at their sole expense to demolish and to remove the Building and all other improvements from the Lands and to deliver to the Lessor vacant possession of the Lands in a clean, level and safe condition.

ARTICLE 5

PERMITTED USES OF BUILDINGS

5.1 Permitted Uses of Buildings

The Lessee covenants and agrees with the Lessor that neither the Lands nor the Buildings nor any part of the Lands or the Buildings may be used for any purposes except as permitted under the Zoning Bylaw in effect as of the Effective Date, or as otherwise permitted under Applicable Laws. The Lessee will be solely responsible for ensuring that its use of the Lands and the Buildings comply with the Zoning Bylaw.

ARTICLE 6

INSURANCE

6.1 Insurance

At all times during the Term immediately following the Substantial Completion of construction of the Buildings, the Lessee will, at no expense to the Lessor, insure and keep insured or cause to be insured the Buildings with one or more companies licenced to do business in the Province of British Columbia for loss or damage on an "all risk" basis, including, by fire and other perils now or hereafter from time to time embraced by or defined in the commercial building form of insurance coverage applicable to similar properties as the Lands and the Buildings and effected in the Province of British Columbia by prudent owners from time to time during the Term including, without restricting the generality of the foregoing, the hazard of lightning, earthquake, explosion, wind storm, cyclone, tornado, hail, flood, sea level rise, riot, civil commotion, malicious damage, aircraft, smoke and vehicle damage to the extent that insurance against such risk or perils, or any of them, may be obtained on a commercially-reasonable basis in an amount equal to the full replacement value thereof.

6.2 Other Insurance

- (a) At all times during the Term, if the Buildings contain any boilers or pressure vessels, the Lessee must, at no expense to the Lessor, maintain or cause to be maintained in respect of the Buildings pressure vessel insurance with one or more companies entitled to do insurance business in the Province of British Columbia protecting the Lessor and the Lessee during the Term in respect of any boilers and such other pressure vessels located and operated on the Lands, such insurance will cover loss or damage caused by rupture of steam pipes.
- (b) At all times during the Term immediately following the Substantial Completion of construction of the Buildings, if the Buildings are used for residential rental purposes, the Lessee must, at no expense to the Lessor, maintain or cause to be maintained in respect of the Buildings rental interruption insurance for at least 24 months with respect to such residential rental use.

6.3 Deductible Amounts

Any of the policies of insurance referred in Sections 4.2 or 6.1 may, with the approval of the Lessor, which approval will not be unreasonably withheld, provide that the amount payable in the event of any loss will be reduced by a deductible amount, such amount to be designated by the Lessee and approved by the Lessor, such approval not to be unreasonably withheld, and the Lessee will be a co-insurer to the extent of the amount so deducted from the insurance monies paid in the event of any loss, and the said amount will for the purpose of Section 6.7 hereof, be included as part of the insurance monies payable and paid.

6.4 Co-Insurance Clauses

If any of the policies of insurance referred to in Sections 4.2 or 6.1 will contain any co-insurance clauses, the Lessee will maintain at all times a sufficient amount of insurance to meet the requirements of such co-insurance clause so as to prevent the Lessor or the Lessee from becoming a co-insurer under the terms of such policy or policies and to permit full recovery by the Lessee in the event of an insured loss.

6.5 Identity of Insured and Subrogation

Any and all policies of insurance referred to in Sections 4.2 and 6.1 will:

- (a) be written in the name of the Lessee as the insured in connection with any liability insurance, with proceeds of any insurance for property losses to be payable to the Lessee or to the Mortgagee, if any, as their respective interests may appear, and with the Lessor and the Mortgagee named as additional insureds in connection with any liability insurance, as their interests may appear;
- (b) contain a waiver of subrogation clause to the effect that any release from liability entered into by the Lessee prior to any loss will not affect any right of the Lessee, the Mortgagee or the Lessor, as applicable, to recover; and
- (c) contain a provision or will bear an endorsement that the insurer will not cancel such policy without first giving the Lessee at least 30 days' notice in writing of its intention to cancel (and the Lessee expressly agrees to provide written notice to the Lessor of any notice of intention by any insurer to cancel any such policy within five days of receiving any such notice from its insurer).

6.6 Release of the Indemnified Parties from Liability for Insured Loss or Damage

The Lessee hereby releases the Indemnified Parties from any and all liability or loss of damage caused by any of the perils against which the Lessee will have insured, or under the terms of this Lease is obligated to insure, and the Lessee hereby covenants to defend, indemnify and save harmless the Indemnified Parties from and against all manner of actions, causes of action, suits, judgments, damages, loss, costs, expenses (including, without limitation, legal expenses on a solicitor and own client basis), claims and demands of any nature whatsoever relating to such insured loss or damage.

6.7 Payment of Loss under Insurance Policy Referred to in Section 6.1

- (a) The proceeds of insurance payable under any or all of the policies of insurance referred to in Sections 6.1 and 6.12 hereof will be paid to the order of the Mortgagee, or to the order of the Lessee if there is no Mortgagee.
- (b) Subject to Article 8, the Lessor and Lessee agree that the Mortgagee or Lessee (as the case may be) will use such proceeds of insurance for the restoration, reconstruction or replacement of the loss or damage in respect of which such insurance proceeds shall be used to restore such damage in accordance with the damage assessed by the insurer and in accordance with the Architect engaged by the Lessee or such other person as the Lessor and Lessee may agree upon who is in charge of such restoration, reconstruction or replacement.

6.8 Workers' Compensation Coverage

At all times during the Term, the Lessee must at its own expense procure and carry or cause to be procured and carried and paid for full workers compensation coverage in respect of all workmen, employees, servants and others engaged in or upon any work on the Lands, the non-payment of which would create a lien on the Lands.

The Lessee must immediately notify the Lessor of any dispute involving third parties which may arise in connection with obtaining and maintaining workers compensation coverage required hereby if such dispute results in the requisite coverage not being in place and the Lessee must take all reasonable steps to ensure the resolution of any such dispute forthwith. At all times during the Term, the Lessee must defend, indemnify and save harmless the Indemnified Parties from and against all damages, costs, expenses (including, without limitation, legal expenses on a solicitor and own client basis), claims, suits, judgments and demands which the Indemnified Parties may incur or suffer as a result of any default by the Lessee of its obligation under this Section 6.8 to ensure the said full workers compensation coverage is maintained. The Lessee must further ensure that no amount of the said workers compensation coverage is left unpaid so as to create a lien on the Lands. If the workers compensation coverage required by this Section 6.8 is not in place within 60 days following the date of the notice to the Lessor hereinbefore mentioned, the Lessor will be entitled to have recourse to the remedies of the Lessor specified in this Lease or at law or equity.

6.9 Comprehensive General Liability Insurance

At all times during the Term, the Lessee must, at the expense of the Lessee, maintain with one or more companies licenced to do business within the Province of British Columbia (and acceptable to the Lessor, acting reasonably) comprehensive general liability insurance against claims for personal injury death or property damage or loss arising out of the Lessee's use and occupation of the Lands and Buildings, indemnifying and protecting:

- (a) specific Indemnified Parties identified by the Lessor, to limits approved by the Lessor from time to time, in each case acting in a commercially-reasonable manner; and
- (b) the Lessee and its directors, officers, employees, agents, successor and assigns.

6.10 Payment of Insurance Premiums

The Lessee must pay or cause to be paid all the premiums under the policies of insurance referred to in this Article 6 as they become due and payable and, in default of payment by the Lessee, the Lessor may pay the same and add the amount so paid to the Additional Rent with all right of distress otherwise as reserved to the Lessor in respect of Additional Rent as rent in arrears.

6.11 Copies of Insurance Policies

If requested by the Lessor, and on an annual basis without request, the Lessee must forthwith from time to time deliver or cause to be delivered to the Lessor Certificates of Insurance confirming the renewal of all policies of insurance each year during the Term referred to in this Article 6 and obtained and maintained by the Lessee hereunder, and at the request of the Lessor, a letter from the Lessee's broker, confirming to the Lessor that the premiums thereon have been or will be paid.

6.12 Insurance May be Maintained by Lessor

Subject to Article 8, the Lessee agrees that should the Lessee at any time during the Term fail to insure or keep insured the Buildings against loss or damage by fire and other perils as required under Section 6.1, or fail to maintain insurance against claims for personal injury, death or property damage or loss as required under Section 6.9, then in any of such events, the Lessor, although not obliged to do so, may obtain and maintain such insurance in such amount or amounts with such deductible amounts and for such period or periods of time as the Lessor deems advisable; and the Lessee must pay to Lessor as

Additional Rent upon the Lessor obtaining any of such insurance and thereafter annually during the Term within 30 days after receipt of any invoice from the Lessor such amounts as, at the rates charged by the insurance companies with whom the Lessor has placed such insurance. In the event the Lessor pays for or obtains and maintains any insurance under this Section 6.12, the Lessor must submit to the Lessee annually a statement of the amount or amounts payable by the Lessee under this Section 6.12 as the cost of such insurance for the next ensuring year and upon receipt of payment therefor will apply the same on account of the premiums of such insurance with the loss, if any, thereunder payable to the Lessee and any Mortgagee as their interests may appear.

ARTICLE 7

REPAIRS AND MAINTENANCE

7.1 Lessor not Obligated to Repair

The Lessor will not be obliged to furnish any services or facilities or to make repairs or alterations in or to the Lands or the Buildings, the Lessee hereby assuming the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Lands and the Buildings.

7.2 Repair by the Lessee

The Lessee at the Lessee's cost and expense must during the Term, put and keep in good order and condition or must cause to be put and keep in good order and condition (reasonable wear and tear excepted so long as the reasonable wear and tear does not unreasonably affect the exterior appearance of the Buildings or the integrity of any foundation or structure of the Buildings) the Lands and the Buildings, and the appurtenances and equipment thereof, both inside and outside, including, but not limited to fixtures, walls, foundations, roofs, vaults, elevators, if any, and similar devices, heating and air conditioning equipment, sidewalks, landscaping, yards and other like areas, water and sewer mains and connections, water, steam, gas, and electric pipes and conduits, and all other fixtures on the Lands and the Buildings and machinery and equipment used or required in the operation thereof, whether or not enumerated herein, and must, in the same manner and to the same extent as a prudent owner, make any and all necessary repairs, replacements, alterations, additions, changes, substitutions and improvements, ordinary or extraordinary, foreseen or unforeseen, structural or otherwise, and keep the Buildings and aforesaid fixtures, appurtenances and equipment fully usable for all the purposes for which the Buildings were erected and constructed and the aforesaid fixtures, appurtenances and equipment were supplied and installed. Such repairs will be in all respects to the standard at least substantially equal in quality of material and workmanship to the original work and material in the Buildings and aforesaid fixtures, appurtenances and equipment.

The Lessee must not commit or suffer waste or injury to the Lands or the Buildings or any part thereof (reasonable wear and tear excepted so long as the reasonable wear and tear does not unreasonably affect the exterior appearance of the Buildings or the integrity of any foundation or structure of the Buildings) and must not use or occupy or permit to be used or occupied the Lands or the Buildings or any part thereof for any illegal or unlawful purpose or in any manner which will result in the cancellation of any insurance, or in the refusal of any insurers generally to issue any insurance as requested. The Lessee must not injure or disfigure the Lands or the Buildings or permit the same to be injured or disfigured in any way; and at the expiration or other termination of this Lease, the Lessee must, except as otherwise expressly provided herein, surrender and deliver up the Lands with the Buildings, and the aforesaid fixtures, appurtenances and equipment thereof, or any replacements thereof or substitution therefor, in

good order and condition (reasonable wear and tear excepted so long as the reasonable wear and tear does not unreasonably affect the exterior appearance of the Buildings or the integrity of any foundation or structure of the Buildings).

For greater certainty, the Lessor acknowledges that the Lessee shall not be obligated to repair or replace any Buildings or related fixtures or equipment after the expiry of the Term (or earlier termination in accordance with Section 8.3) to a standard which will allow the Buildings to continue to be occupied and operated for residential purposes. The Lessee acknowledges that the foregoing acknowledgement by the Lessor is subject to and in no way diminishes the Lessee's obligations to repair and maintain the Lands and the Buildings, and the appurtenances and equipment thereof, during the continuation of the Term in accordance with this Section 7.2.

7.3 Repairs to Buildings by Lessor

Subject to Article 8, the Lessee covenants and agrees with the Lessor that if the Lessee does not put and keep in good order and condition or cause to put and keep in good order and condition (reasonable wear and tear excepted so long as the reasonable wear and tear does not unreasonably affect the exterior appearance of the Buildings or the integrity of the foundation or structure of the Buildings) the Lands and the Buildings and the fixtures, appurtenances and equipment thereof, both inside and outside, all as more particularly required by the provisions of Section 7.2, the Lessor through its agents, servants, contractors and subcontractors, although not obliged to do so, may (subject to the observance by the Lessor of the Lessee's reasonable requirements regarding Building and Building Occupants' security and privacy) enter upon those parts of the Lands and the Buildings required for the purpose of making the necessary repairs required to put the Lands, Buildings, fixtures, appurtenances and equipment in good order and condition (reasonable wear and tear excepted so long as the reasonable wear and tear does not unreasonably affect the exterior appearance of the Buildings or the integrity of the foundation or structure or the Buildings); provided that the Lessor will make such repairs, only after giving the Lessee 60 days' written notice of its intention so to do, except in the case of an emergency, and will comply with the Lessee's reasonable requirements regarding Building and Building Occupants' security and privacy. Any amount paid by the Lessor in making such repairs to the Lands and the Buildings or any part or parts thereof, together with all costs and expenses of the Lessor must be reimbursed to the Lessor by the Lessee on demand together with:

- (a) interest at the rate of 6% per annum above the Prime Rate from the date incurred until paid; and
- (b) an administrative charge in an amount of fifteen percent (15%) of such amount paid,

and may be recovered by the Lessor as Additional Rent.

ARTICLE 8 DAMAGE OR DESTRUCTION

8.1 Rent not to Abate

The partial destruction or damage or complete destruction by fire or other casualty of the Buildings will not terminate this Lease or (subject to Section 8.3) entitle the Lessee to surrender possession of the Lands or the Buildings or to demand any abatement or reduction of any monies payable by the Lessee under this Lease, any law or statute now or in the future to the contrary notwithstanding.

8.2 Lessee's Obligations When the Buildings Are Damaged or Partially Destroyed

Subject to Section 8.3, the Lessee covenants and agrees with the Lessor that in the event of damage to or partial destruction of the Buildings (excluding Substantial Destruction) and subject to compliance with Applicable Laws, the Lessee must either:

- (a) reconstruct or replace any part of the Buildings destroyed with a new structure in accordance with any agreement which may be made by the Lessee with the Lessor; or
- (b) repair or replace such damage or destruction in accordance with the Building Permit, in the absence of any such agreement.

8.3 Lessee's Obligations When the Buildings Are Completely or Substantially Destroyed

If Substantial Destruction occurs, then the Lessee (or any Mortgagee) must either:

- (a) reconstruct or replace any part of the Building destroyed in accordance with:
 - (i) any agreement which may be made by the Lessee with the Lessor, or
 - (ii) the Building Permit, in the absence of any such agreement; or
- (b) elect to terminate and surrender this Lease, by delivery to the Lessor of a Surrender Notice at any time prior to 180 days following the date of such Substantial Destruction, in which event, following the delivery of a Surrender Notice, the following provisions shall apply:
 - (a) the Lessee will not be obligated to repair or reconstruct any damage to or destruction of any Building, provided that if the Lessee elects to repair or reconstruct then Section 8.2(a) and Section 8.2(b) shall apply, *mutatis mutandis*;
 - (b) the Lessee will be responsible to promptly apply to the District for such permits as may be required to demolish the Building (and the Lessor, strictly in its capacity as owner of the Lands, will cooperate with the Lessee's reasonable requests in connection therewith);
 - (c) the Lessee will (upon receipt of all requisite permits) be responsible, at the Lessee's sole expense, to demolish and to remove the Building and all other improvements from the Lands and to deliver to the Lessor vacant possession of the Lands in a clean, level and safe condition;
 - (d) effective as of the date of delivery to the Lessor of vacant possession of the Lands as required above, the Lessee (and any Mortgagee) will execute and deliver to the Lessor all documentation as may be required to surrender and discharge this Lease (and any Mortgage) from registered title to the Lands;
 - (e) (subject to payment by the Lessee of all costs involved in the demolition and removal of the Building from the Lands) and delivery of the Lands in a

clean, level and safe condition, the Lessee (or Mortgagee, as applicable) shall be entitled to receive and retain any proceeds of insurance available to the Lessee in connection with any event of Substantial Destruction; and

- (f) the Lessee shall not be entitled to recover, or claim recovery of, any portion of Rent.

8.4 Replacement, Repair or Reconstruction

Any replacement, repair or reconstruction of the Buildings or any part thereof under the provisions of Sections 8.2 or 8.3 hereof must be made or done in compliance with the provisions of Sections 7.2 and 9.1 hereof and in any event the Lessee shall not be entitled to recover, or claim recovery of, any portion of Rent from the Lessor.

ARTICLE 9

REPLACEMENTS, ALTERATIONS AND ADDITIONS

9.1 Replacements, Alterations and Additions

If the Lessee makes or permits to be made any changes, alterations, replacements, substitutions or additions affecting the structure of the Buildings, the major electrical or mechanical systems contained therein, or the exterior design or appearance of the Buildings or the Lands, all such changes, alterations, replacements, substitutions or additions:

- (a) must comply with the Land Use Requirements and this Lease; and
- (b) subject to Article 10, once begun, will be prosecuted with reasonable due diligence to completion.

ARTICLE 10

UNAVOIDABLE DELAYS

10.1 Unavoidable Delay

If, by reason of the occurrence of any event of Unavoidable Delay, the Lessee is, in good faith and without default or neglect on its part, prevented or delayed in the Commencement of Construction, in the Substantial Completion or in any repair of the Buildings or any part or parts of them which under the terms of this Lease the Lessee is required to do by a specified date or within a specified time or if not specified within a reasonable time, the date or period of time within which the work was to have been completed will be extended by the Lessor by a reasonable period of time at least equal to that of such delay or prevention caused by such event of Unavoidable Delay and the Lessee will not be deemed to be in default if it performs and completes the work in the manner required by the terms of this Lease within such extended period of time or within such further extended period of time as may be agreed upon from time to time between the Lessor and the Lessee, provided that the Lessee delivers notice in writing to the Lessor detailing the date of the commencement and nature of the Unavoidable Delay (the “**Delay Notice**”) by no later than fourteen (14) days after the commencement of the Unavoidable Delay. If the Lessor and the Lessee cannot agree as to whether or not there is an event of Unavoidable Delay within the meaning of this Section 10.1 or if they cannot agree as to the length of such Unavoidable Delay, then

such matter will be determined in accordance with Article 21. The Lessee must act diligently and take all commercially reasonable steps of a prudent owner to remove the cause or causes of any Unavoidable Delay in the Commencement of Construction and Substantial Completion. Within 48 hours of the time the Unavoidable Delay is remedied or discontinued, the Lessee must give notice in writing to the Lessor of such remedy or discontinuance, and that the Lessee has resumed, or is then able to resume, the performance of its suspended covenants and obligations hereunder.

ARTICLE 11

BUILDERS LIENS

11.1 Release of Liens

The Lessee must, throughout the Term at its own cost and expense, cause any and all builders liens and other liens for labour, services and materials alleged to have been furnished with respect to the Lands of the Buildings, which may be registered against or otherwise affect the Lands or the Buildings, to be paid, satisfied, released (including, without limitation, the release of all such liens from the interest of the Lessor in the Lands), or vacated within 42 days after the earlier of the Lessee becoming aware of any such lien and the date when the Lessor delivers to the Lessee and the Mortgagee written notice of any claim for any such lien PROVIDED HOWEVER, that in the event of a *bona fide* dispute by the Lessee of the validity or correctness of any claim for any such lien, the Lessee will not be bound by the foregoing, but will be entitled to defend against the same in any proceedings brought in respect thereof after first paying into court the amount claimed or sufficient security therefor, and such costs as the court may direct or the Lessee may provide, as security in respect of such claim: and, upon being entitled to do so, the Lessee must register all such documents as may be necessary to cancel such lien from the Lands and the Buildings, including, without limitation, the Lessor's interest therein.

11.2 Lessor Has Filed Notice of Interest

It is agreed that the Lessor will not be responsible for claims of builder's liens filed by persons claiming through the Lessee or persons for whom the Lessee is in law responsible. The Lessee acknowledges and agrees that the improvements to be made to the Lands will be made at the Lessee's request solely for the benefit of the Lessee and those for whom the Lessee is in law responsible. The Lessor has filed a notice of interest in the LTO under Section 3(2) of the *Builders Lien Act* stating that the Lessor is giving notice that it will not be responsible for any improvements done to the Lands and Buildings or other Improvements done to the Lands and that the Lessor is filing notice that it will not be responsible for any improvements done the Lands and Buildings or other improvements thereon, unless the improvements are undertaken at the express request of the Lessor.

ARTICLE 12

INSPECTION AND ADVERTISING BY LESSOR

12.1 Inspection by Lessor

The Lessor and the Lessee agree that it will be lawful for a representative of the Lessor at all reasonable times during the Term (and upon delivery of at least five (5) business days' prior written notice to the Lessee and subject to the observance by the Lessor of the Lessee's reasonable requirements regarding Building and Building Occupants' security and privacy) to enter the Lands and the Buildings, or any of them and to examine the condition thereof; and, further, that all wants of reparation as required by

Section 7.2 which upon such views may be found, and for the amendment of which notice will be delivered or given by the Lessor to the Lessee, the Lessee must within 60 days after every such notice or such longer period as provided in Section 19.2(a), well and sufficiently repair and make good accordingly.

12.2 Advertising by Lessor

During the final 12 months of the Term, the Lessor will be entitled to display upon the Lands any signs advertising the Lands and the Buildings as being available for purchase or lease or such other use as determined by the Lessor, if the signs are displayed in such a manner as will not interfere unreasonably with the Lessee's use of the Lands and the Buildings.

ARTICLE 13 OBSERVANCE OF APPLICABLE LAWS

13.1 Applicable Laws

The Lessee covenants with the Lessor that throughout the Term the Lessee will comply with all Applicable Laws which relate to the construction of the Buildings, to the equipment and maintenance of the Buildings, to the operation, occupation and use of the Buildings or the Lands to the extent that the Lessee operates, occupies and uses the Buildings or the Lands whether by subletting the same or any part thereof or otherwise prior to the filing of the Leasehold Strata Plan and the creation of the Strata Corporation, and to the making of any repairs, replacements, alterations, additions, changes, substitutions or improvements of or to the Buildings, the Lands or any part thereof.

13.2 Environmental

Without derogating from the Lessee's obligation under Section 13.1, the Lessee covenants and agrees with the Lessor to:

- (a) develop and use the Lands and Buildings only in compliance with all Environmental Laws;
- (b) at the reasonable request of the Lessor (and subject to the observance by the Lessor of the Lessee's reasonable requirements regarding Building and Building Occupants' security and privacy), permit the Lessor to investigate the Lands and Buildings, and any goods thereon;
- (c) at the reasonable request of the Lessor and provided that the Lessor, acting reasonably, has reason to believe that the Lands and the Buildings are not in compliance with Environmental Laws, obtain from time to time at the Lessee's cost a report from an independent consultant designated or approved by the Lessor verifying compliance with Environmental Laws and this Lease or the extent of any non-compliance therewith;
- (d) except in compliance with all Environmental Laws, not store, manufacture, dispose, treat, generate, use, transport, remediate, or Release Environmental Contaminants on or from the Lands or Buildings without notifying the Lessor in writing and receiving prior written consent from the Lessor with respect thereto, which consent may be unreasonably or arbitrarily withheld;

- (e) if required by any Environmental Laws, promptly remove any Environmental Contaminants from the Lands or Buildings in a manner which conforms to Environmental Laws governing their removal; and
- (f) notify the Lessor in writing:
 - (i) within seven (7) days of discovery thereof, of any enforcement, clean up, removal, litigation, or other governmental, regulatory, judicial, or administrative action instituted or threatened in writing against the Lessee, the Lands, or the Buildings pursuant to any Environmental Laws;
 - (ii) within seven (7) days of all claims, actions, orders, or investigations instituted or threatened in writing by any third party against the Lessee, the Lands, or the Buildings relating to damage, contribution, cost recovery, compensation, loss, or injuries resulting from any Environmental Contaminants or any breach of the Environmental Laws; and
 - (iii) within seven (7) days of discovery thereof, of the discovery of any Environmental Contaminants or any occurrence or condition on the Lands or Buildings or any real property adjoining or in the vicinity of the Lands which could subject the Lessee, the Lands, or the Buildings to any fines, penalties, orders, or proceedings under any Environmental Laws.

13.3 Lessor May Make Enquiries

The Lessee hereby authorizes the Lessor to make enquiries from time to time of any governmental authority with respect to the compliance by the Lessee with Environmental Laws in connection with the Lands or the Buildings, and the Lessee agrees that the Lessee will from time to time provide to the Lessor such written authorization as the Lessor may reasonably require in order to facilitate the obtaining of such information; provided that the Lessor will keep any and all such information in strict confidence and shall not disclose any such information unless disclosure is first approved in writing by the Lessee or required by operation of any Applicable Laws.

13.4 Environmental Indemnity and Release

The Lessee hereby releases and shall indemnify and save harmless the Indemnified Parties from and against any liabilities, damages, losses, interest, penalties, fines, monetary sanctions, costs, expenses or claims (including without limitation reasonable costs of legal counsel and other professional advisors, consultants and experts in the defense, investigation, and resolution of such claim and costs of any remedial or other management action related thereto) (collectively, the “**Claims**”) that occur or arise as a result of:

- (a) any breach by the Lessee of any provisions of this Article 13,
- (b) the Lessee or any of its employees, officers, trustees, directors, agents, invitees, contractors, and others for whom they are in law responsible causing or having caused, during the Term, any Release of any Environmental Contaminants at, in, on, under or about the Lands or Buildings in breach of Environmental Laws;

- (c) any claims brought by any third party, including but not limited to any governmental authority, and any orders made by any governmental authority with respect to any Environmental Contaminants on or at the Lands or Buildings; and
- (d) any claims brought by any third party, including but not limited to any governmental authority, and any orders made by any governmental authority with respect to any Environmental Contaminants migrating from the Lands or Buildings,

but, for greater certainty, not including any Claims that arise from any breach by the Lessor of the Lessor's representations and warranties contained in Section 2.1(d) of the Offer to Lease between the Lessor and 2195 Gordon Avenue Limited Partnership dated for reference ●, 2022.

The provisions of this Section 13.4 shall survive the expiration or earlier termination of this Lease.

ARTICLE 14

RIGHTS OF LESSOR AND LESSEE

14.1 Rights of Lessor and Lessee

All rights and benefits and all obligations of the Lessor and the Lessee under this Lease are rights, benefits and obligations of the Lessor and the Lessee respectively in their capacities as Lessor and Lessee respectively under this Lease, and references in this Lease to the "**Lessor**" will be to the District in its capacity and role as landlord under this Lease and as registered owner of the Lands and not to the District in its capacity as the municipal government with regulatory powers with respect to the Lands.

ARTICLE 15

RELEASE, INDEMNITY AND LIMITATION OF LIABILITY

15.1 Indemnification of the Indemnified Parties by the Lessee

Except in each case to the extent attributable to the gross negligence or wrongful intentional acts on the part of the Indemnified Parties, the Lessee covenants and agrees to defend, indemnify and save harmless the Indemnified Parties from and against all damages, losses, actions, causes of action, suits, judgments, claims, demands, builders liens, liabilities, expenses (including, without limitation, legal expenses on a solicitor and own client basis), costs, indirect or consequential damages (including, without limitation, loss of profits and loss of use and damage arising out of delays) which may arise or accrue to any person, firm or corporation against the Indemnified Parties or any of their respective contractors and subcontractors which the Indemnified Parties may pay, incur, sustain or be put to arising out of or in any way connected with, or that would not or could not be made or incurred but for unremedied breaches or violations by the Lessee of its obligations under this Lease.

Without derogating from the generality of the foregoing, the Lessee agrees to defend, indemnify and save harmless the Indemnified Parties in respect of:

- (a) all manner of actions, causes of action, suits, judgments, damages, loss, costs, claims and demands of any nature whatsoever relating to and arising during the Term or any period of over holding out of:

- (i) bodily injury or death;
- (ii) property damage; or
- (iii) other loss or damage,

resulting from:

- (iv) the conduct of any work;
- (v) any act or omission; or
- (vi) relating to or arising from the occupation or possession of the Lands or any portion thereof including any Building on the Lands,

by the Lessee or any assignee, subtenant, agent, employee, contractor, subcontractor, invitee or licensee of the Lessee;

- (b) all costs, expenses and liabilities incurred by the Indemnified Parties in connection with or arising out of all such claims, including, without limitation, the expenses of any action or legal proceeding pertaining thereto on a solicitor and own client basis;
- (c) the liabilities or obligations incurred or sustained by or imposed upon the Indemnified Parties; and
- (d) any and all manner of actions, causes of action, suits, judgments, administrative proceedings, damages, losses, costs, expenses (including without limitation, legal expenses on a solicitor and own client basis), builder's liens, claims and demands of any nature whatsoever,

arising from any breach, violation or non-performance of any covenant, proviso, condition or agreement contained in this Lease on the part of the Lessee to be fulfilled, kept, observed or performed.

15.2 Limitation of Liability of the Lessor

The Lessee acknowledges and agrees that the Lessor, when involved in:

- (a) inspecting and approving plans;
- (b) inspecting buildings, utilities, structures; or
- (c) inspecting other things,

requiring a permit for their construction, renovation, repair or reconstruction, owes no legal duty of care to the Lessee, its officers, employees, agents, contractors, subcontractors, successors and assigns on which a cause of action can be based, to ensure that plans, buildings, utilities, structures or other things so constructed, renovated, repaired or reconstructed on the Lands or on lands in proximity to the Lands, comply with all Applicable Laws.

The Lessee further acknowledges and agrees that the Lessor is not liable for damages of any nature (including, without limitation, indirect or consequential damages such as loss of profits or loss of use and damage arising out of delays) sustained by the Lessee for any reason or in any manner, arising from any act or omission of the Lessor to:

- (d) discover or detect contraventions of; or
- (e) enforce,

any District bylaws, provisions, orders or other things in respect of the Lands, except to the extent such liability arises as a result of any gross negligence or wrongful intentional acts on the part of the Indemnified Parties including any Building on the Lands.

15.3 Release and Indemnification of the Indemnified Parties

The Lessee does hereby remise, release and forever discharge, and does hereby covenant and agree to defend, indemnify and save harmless the Indemnified Parties, from and against all damages, losses, actions, causes of actions, claims, demands, builder's liens, liabilities, judgments, expenses (including without limitation, legal expenses on a solicitor and own client basis), costs, indirect or consequential damages (including, without limitation, loss of profits and loss of use and damage arising out of delays) which may arise or accrue to the Lessee or any person, firm or corporation against the Indemnified Parties, arising out of or in any way connected with:

- (a) the construction of the Buildings; or
- (b) their later renovation, repair, or reconstruction from time to time, including, without limitation, any failure to complete construction, renovation, repair, and/or reconstruction of the Buildings, however arising; and
- (c) inspecting and approving plans or inspecting buildings, utilities, structures or other things requiring a permit for their construction.

Without limiting the other provisions of this Article 15, the Lessee does further remise, release and forever discharge and does hereby covenant and agree to defend, indemnify and save harmless the Indemnified Parties for damages of any nature (including, without limitation, indirect or consequential damages such as loss of profits or loss of use and damage arising out of delays) sustained by the Lessee for any reason or in any manner, arising from any act or omission of the Lessor to:

- (d) discover or detect contraventions of; or
- (e) enforce,

any District bylaws, provisions, orders or other things in respect of the Lands, including any Building on the Lands, except to the extent such liability arises as a result of any gross negligence or wrongful intentional acts on the part of the Indemnified Parties.

15.4 Indemnification Services: Termination of Lease

The obligations of the Lessee to defend, indemnify and save harmless the Indemnified Parties under the provisions of this Lease will, subject to the provisions of Section 26.4, apply and continue notwithstanding

the termination of this Lease or breach of this Lease by the Lessor, or anything in this Lease to the contrary notwithstanding.

ARTICLE 16

SUBLETTING AND ASSIGNING

16.1 Subletting by Lessee – Other Than by Way of Mortgage

Save as expressly provided in Section 16.3, the Lessee must not during the Term sublease the Lands or any part thereof or any structure or any part of any structure erected thereon to any person, persons or corporation whatsoever, without the consent in writing of the Lessor, which consent the Lessor may arbitrarily withhold; PROVIDED HOWEVER that:

- (a) if Basic Rent and Additional Rent and taxes or amounts in lieu of taxes have been paid and the Lessee is not then in default in the performance or observance of the other covenants, provisos and agreements required of the Lessee to be performed and observed, the Lessee may from time to time without the consent of the Lessor, enter into subleases with lessees or occupants of the units in the Buildings (including both residential and commercial units, if any, and whether or not such units are strata lots), such units to be used by the lessees or occupants in accordance with the Land Use Requirements only, provided, however, that where the Lessee proposes to enter into a sublease of all but not less than all of the units in the Buildings to a single party, that is not an Affiliate, then prior written consent of the Lessor must be obtained, which consent will not be unreasonably withheld;
- (b) notwithstanding any such consent being given by the Lessor under this Section 16.1 and such subleasing being effected, the Lessee will remain bound to the Lessor for the fulfilment of all of its obligations hereunder; and
- (c) at the Lessor's request, a copy of any or all subleases will be forwarded to the Lessor within 30 days of the conclusion of such transaction together with particulars of registration, if any, in the LTO.

16.2 Assignment by Lessee – Other Than by Way of Mortgage

- (a) The Lessee must not during the Term (other than by way of Mortgage as permitted in or by Section 16.3 or as permitted by Section 16.4) assign, transfer or sell (including change of control (as that term is defined in the *Business Corporations Act* (BC)) of the Lessee) or otherwise, by any act or deed, cause the Lands or the Buildings, or any of them, or this Lease, to be assigned, transferred or sold to any person, persons or corporation whatsoever without the consent in writing of the Lessor, acting reasonably, provided as set forth in Sections 16.2(b) and 16.2(c).
- (b) Provided that the Lessor, in considering a request by the Lessee that such an assignment be approved, will be acting reasonably in taking into account the following

matters, and if the Lessor is not satisfied as to any of such matters, the Lessor will be acting reasonably in refusing to approve the proposed assignment:

- (i) the reputation and experience of the proposed assignee as a real estate developer and the nature of the business of the proposed assignee;
 - (ii) the financial standing and capability of the proposed assignee (as evidence of which the three most recent financial statements of the proposed assignee must be provided to the Lessor), including, without limitation, evidence that the proposed assignee will be able to secure a lender to finance construction of the Buildings and all ancillary facilities, and evidence that there are no actions, suits, claims, legal or administrative proceedings or investigations, private or public, pending or threatened, which might affect the proposed assignee's ability to fulfill all the covenants and agreements of the Lessee under this Lease and the Model Strata Lot Lease;
 - (iii) the ability of the Lessee and the proposed assignee to arrange that the proposed assignee, following the assignment, will have full ability to perform the covenants and agreements of the Lessee under this Lease and the Model Strata Lot Lease, including, without limitation, evidence that all drawings, plans, specifications, designs, applications, permits, approvals and contracts relating to the construction of the Buildings and all facilities ancillary thereto will be assigned to the proposed assignee; and
 - (iv) past and present dealings of the proposed assignee with the District.
- (c) Provided however that the Lessor will also be acting reasonably and will be entitled arbitrarily to withhold its consent to an assignment:
- (i) if the Lessee is in default in the performance and observance of any of the covenants, provisos and agreements required of the Lessee to be performed and observed under this Lease, the Model Strata Lot Lease, or any restrictive covenant registered against the Lands in priority to this Lease;
 - (ii) if the Basic Rent to be paid by the Lessee to the Lessor under Section 3.1 has not been paid in full;
 - (iii) unless the proposed assignee enters into an agreement, in form and content satisfactory to the Lessor with the Lessor whereby the proposed assignee covenants directly with the Lessor and agrees to be bound by and comply with all the covenants, provisos and agreements required of the Lessee to be performed and observed under this Lease and the Model Strata Lot Lease; and
 - (iv) unless the proposed assignee enters into an agreement with the Lessor, in form and content satisfactory to the Lessor, whereby the Lessor covenants and agrees to pay the Lessor on the date of the assignment eighty per cent (80%) of any positive increase between:
 - (A) the Basic Rent, and
 - (B) the consideration received by the Lessee under the assignment.

- (d) If there is an assignment, other than any assignment of the leasehold interest in a Strata Lot pursuant to Article 17 of the Model Strata Lot Lease, the Lessee shall pay the Lessor on the date of such assignment eighty per cent (80%) of any positive increase between:
 - (i) the Basic Rent; and
 - (ii) the consideration received by the Lessee under such assignment.

For greater certainty, if the consideration received by the Lessee under such assignment is less than the Basic Rent, then the Lessee shall not be required to pay the Lessor any amount pursuant to this section.

- (e) Notwithstanding the foregoing, if Basic Rent and Additional Rent and taxes or amounts in lieu of taxes have been paid and the Lessee is not then in default in the performance or observance of the other covenants, provisos and agreements required of the Lessee to be performed and observed:
 - (i) the Lessee, without the consent of the Lessor, may offer for sale its leasehold interest in the proposed Strata Lots which the Lessee proposes to create by deposit of a Leasehold Strata Plan in accordance with Article 26 (provided however, that where the Lessee proposes to offer for sale its leasehold interest in all proposed Strata Lots to one person or one corporation or group of companies with substantially the same shareholders or directors, then the prior consent of the Lessor to such person or corporation must be obtained in accordance with Sections 16.2(b) and 16.2(c) and further provided that the Lessee has complied with all requirements of the *Real Estate Development Marketing Act*, S.B.C. 2004, c. 41 so far as they pertain to the offer for sale of the proposed Strata Lots);
 - (ii) the Lessee, without the consent of the Lessor, may assign transfer or convey its leasehold interest in those Strata Lots created by the deposit of the Leasehold Strata Plan as aforesaid which have been Substantially Completed, if the District has issued a Certificate of Occupancy in respect thereof and the provisions of Article 17 of the Model Strata Lot Lease apply to such assignments, transfers or conveyances.
- (f) If the Lessee is required by the Superintendent of Real Estate to submit a prospectus or disclosure statement to the Superintendent relating to the proposed Strata Lots, the Lessee shall provide a copy of the prospectus or disclosure statement, as the case may be, to the Lessor within 30 days of the acceptance thereof by the Superintendent of Real Estate.
- (g) The Lessee shall provide a copy of any agreements to purchase, assignments, transfers or sales relating to the proposed Strata Lots to the Lessor within 30 days following the completion of each such transaction together with the LTO registration particulars for such transaction, if any.

16.3 Mortgaging by Lessee

The Lessee will have the right, without the consent of the Lessor, at any time and from time to time to mortgage its leasehold estate in the Lands under this Lease, whether by Mortgage, assignment or sublease and, inter alia, to give security by way of any Mortgage, assignment of rents or other security

and to extend, modify, renew, vary or replace any such Mortgage, assignment or other security. A copy of any or all Mortgages will be furnished to the Lessor, together with particulars of registration in the LTO, if applicable, within 30 days following any such registration.

16.4 Permitted Transfers by Lessee after Buildings are Substantially Completed

Notwithstanding anything to the contrary herein including, without limitation Section 16.2(a) and provided that:

- (a) the Building is Substantially Completed;
- (b) the Lessee is not in default in the performance and observance of any of the covenants, provisos and agreements required of the Lessee to be performed and observed under this Lease, the Model Strata Lot Lease, or any restrictive covenant registered against the Lands in priority to this Lease;
- (c) the Basic Rent to be paid by the Lessee to the Lessor under Section 3.1 has been paid in full; and
- (d) the proposed assignee enters into an agreement, in form and content satisfactory to the Lessor with the Lessor whereby the proposed assignee covenants directly with the Lessor and agrees to be bound by and comply with all the covenants, provisos and agreements required of the Lessee to be performed and observed under this Lease and the Model Strata Lot Lease,

the Lessee shall be entitled to freely assign any or all rights and interests of the Lessee in this Lease, without consent of the Lessor to any third party, including any Affiliate of the Lessee, from time to time, and shall thereafter be released of any liability hereunder except to the extent arising prior to the effective date of such assignment.

ARTICLE 17 MORTGAGE

17.1 Rights of Mortgagee

Notwithstanding anything to the contrary in Article 16, the Mortgagee under any Mortgage referred to in Section 16.3 may enforce the Mortgage or such other security as may be granted to the Mortgagee and acquire title to the leasehold estate of the Lessee in any lawful way and may (including without limitation by a receiver or a representative, as the case may be), take possession of and manage the Lands and in enforcing its security, may freely sell, assign or otherwise transfer the leasehold estate without consent of but on notice to the Lessor, and the purchaser, assignee, or transferee of the leasehold estate will be liable to perform the obligations imposed upon the Lessee by this Lease only so long as such purchaser, assignee or transferee has ownership or possession of such leasehold estate.

17.2 Notice to and Remedies of Mortgagee

- (a) No re-entry, termination, acceptance of surrender, disclaimer or forfeiture of this Lease or distress by the Lessor or by a receiver, interim-receiver, receiver-manager, liquidator, custodian or trustee will be valid against any Mortgagee who has executed and delivered

to the Lessor a tripartite agreement in the form attached hereto as Schedule C (or such other form as may be approved by the Lessor and any Mortgagee, each acting in a commercially-reasonable manner) unless the Lessor will first have given to the Mortgagee notice of any default entitling the Lessor to re-enter, terminate or forfeit this Lease, specifying the nature of that default and stating the Lessor's intention to take such proceedings and requiring the Mortgagee:

- (i) to cure the default specified in the notice within a period of 60 days from the date of receipt of that notice by the Mortgagee; or
 - (ii) if the default is other than the failure to pay Rent or any other sums required to be paid by the Lessee by any provisions of this Lease and if the default cannot reasonably be cured within such 60 day period, then to immediately commence to cure the same and to diligently prosecute to conclusion all acts necessary to cure the default and the Lessor hereby grants the Mortgagee access to the Lands and the Buildings for that purpose.
- (b) If the default is cured within the period specified, the Mortgagee (or any other entity designated by the Mortgagee by written notice to the Lessor) will be entitled to become tenant of the Lands and Buildings in the place and stead of the Lessee for the balance of the Term remaining at the date of the notice of default or contingency, providing that the Mortgagee (or such designated entity) attorns as tenant to the Lessor and undertakes to be bound by and to perform the covenants and agreements of the Lessee under this Lease from the date and for so long as the Mortgagee (or such designated entity) remains tenant and has not assigned the balance of the Term; PROVIDED however that in the event the Mortgagee consists of more than one Mortgagee each having a separate charge upon the Lessee's interest in this Lease, and more than one of them wishes to cure the default or contingency specified in the notice aforesaid, then the Lessor hereby agrees to permit curing of the default or contingency specified as aforesaid and the assumption of the balance of the Term as aforesaid by that Mortgagee (or such designated entity) which is willing to cure and assume as aforesaid and whose charge ranks in priority over the charge or charges held by the other Mortgagee or Mortgagees willing to cure and assume as aforesaid; EXCEPT that in the event any Mortgagee has commenced a foreclosure action the provisions of Section 17.2(c) will apply.
- (c) In the event the Mortgagee commences foreclosure proceedings against the Lessee, whether or not the Lessee is in default of the performance of its covenants and agreements with the Lessor under this Lease at the time such foreclosure proceedings are commenced, the Lessor must not re-enter, terminate or forfeit this Lease after the commencement of foreclosure proceedings on the ground of any default or contingency entitling the Lessor to re-enter, terminate or forfeit this Lease if the Mortgagee:
 - (i) has first given to the Lessor notice of the foreclosure proceedings;
 - (ii) is actively prosecuting the foreclosure proceedings without undue delay;
 - (iii) cures the default or contingency within a period of 60 days from the date of receipt of notice from the Lessor specifying the nature of the default or contingency, or if the default or contingency is other than the failure to pay Rent or any other sums

required to be paid to the Lessor by any provision of this Lease and if such default or contingency cannot be reasonably be cured within such 60 day period, immediately commences to cure the same and to diligently prosecute to conclusion all acts necessary to cure the default or contingency; and

- (iv) performs and observes all of the Lessee's covenants and agreements under this Lease and without undue delay diligently prosecutes to a conclusion the foreclosure proceedings commenced by the Mortgagee.

In the event that the Mortgagee (or another entity designated by the Mortgagee) acquires title to the Lessee's interest in the Lands and the Buildings under the foreclosure proceedings, the Mortgagee will thereupon become subrogated to the rights of the Lessee under this Lease, provided it (or such designated entity) attorns to the Lessor as tenant and undertakes to the Lessor to be bound by and to perform the covenants and agreements of this Lease for so long as it remains tenant and has not assigned the balance of the Term. PROVIDED HOWEVER that in the event the Mortgagee consists of more than one Mortgagee and more than one of them commences foreclosure proceedings, the right to cure any default of contingency granted by this Section 17.2(c) to a foreclosing Mortgagee will be deemed granted to them in the order or priority of the changes held by the foreclosing Mortgagees.

- (d) If this Lease is subject to termination or forfeiture under Article 18 by reason of the bankruptcy or insolvency of the Lessee and the Mortgagee has filed with the Lessor notice of Mortgage in favour of the Mortgagee and specified an address for notice under Article 27, the Lessor must give to the Mortgagee notice of the bankruptcy or insolvency of the Lessee entitling the Lessor to terminate or forfeit this Lease and stating the Lessor's intention to take such proceedings and requiring the Mortgagee to cure any other default of the Lessee and the Lessee's other default shall be deemed to have been sufficiently cured if the Mortgagee:
 - (i) commences foreclosure proceedings against the Lessee as more particularly set out in Section 17.2(c);
 - (ii) takes possession and control of the Lands and Buildings, or causes a receiver to be appointed under terms of the Mortgage or by a court of competent jurisdiction, who takes possession and control of the Lands and the Buildings, and the Lessor hereby grants the Mortgagee or such receiver access to the Lands and the Buildings for the purpose;
 - (iii) cures every default within a period of 60 days from the date of receipt by the Mortgagee of the notice from the Lessor of the bankruptcy or insolvency of the Lessee, or if such default or defaults are other than the failure to pay Rent or any other sums required to be paid to the Lessor by any provision of this Lease and if such default or defaults cannot reasonably be cured within such 60 day period, immediately commences to cure the same and to diligently prosecute to conclusion all acts necessary to cure default or defaults, and

- (iv) (or such designated entity) attorns as tenant to the Lessor and undertakes to the Lessor to be bound by and to perform the covenants and agreements of this Lease for so long as it remains tenant and has not assigned the balance of the Term,

PROVIDED HOWEVER that in the event the Mortgagee consists of more than one Mortgagee the right to take possession and control, to cure any default and to assume this Lease as aforesaid will be deemed granted to them in the order of the priority of their respective charges.

- (e) Any re-entry, termination or forfeiture of this Lease made in accordance with the provisions of this Lease as against the Lessee will be valid and effectual against the Lessee even though made subject to the rights of any Mortgagee to cure any default of the Lessee and to continue as tenant under this Lease.
- (f) No entry upon the Lands or into the Buildings by the Mortgagee under this Section 17.2 for the purpose of curing any default or defaults of the Lessee will release or impair the continuing obligations of the Lessee.

17.3 Mortgagee Subject to Lessor's Rights under this Lease

Subject to the provisions of Section 17.2, every Mortgage must be made expressly subject to the rights of the Lessor under this Lease.

17.4 Protection of Mortgagee (Tri-Partite Agreements)

The Lessor and the Lessee agree that the obligations of the Lessor under Section 17.2 are subject to the Mortgagee entering into an agreement in the form attached hereto as Schedule C (or such other form as may be approved by both the Lessor and any Mortgagee, each acting in a commercially-reasonable manner) whereby the Mortgagee covenants and agrees that if it (or any other entity designated by the Mortgagee by written notice to the Lessor) acquires title to the Lessee's interest in this Lease but only for so long as it holds such title, it must perform and observe the covenants and agreements required of the Lessee to be performed and observed, if not performed or observed by the Lessee, whether or not the Lessor has taken any steps to enforce performance or observance of any of the covenants and agreements in this Lease to be performed or observed by the Lessee.

ARTICLE 18 BANKRUPTCY OF LESSEE

18.1 Events of Bankruptcy or Receivership

The parties agree, subject to the provisions of Sections 17.2 and 17.4, that:

- (a) if the Lessee makes a general assignment for the benefit of creditors; or
- (b) if the Lessee institutes proceedings to be adjudicated bankrupt or insolvent or consents to the institution of bankruptcy or insolvency proceedings against the Lessee or files an application or petition or answer or consent, seeking re-organization or re-adjustment of the indebtedness of the Lessee under the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act* or any law of Canada or any province thereof

relating to bankruptcy or insolvency or consents to the filing of any such application or petition or consents to the appointment of a receiver, interim-receiver, receiver-manager, trustee, liquidator, or custodian; or

- (c) if a receiver, interim-receiver, receiver-manager, trustee, liquidator or custodian of all or substantially all of the property of the Lessee or of the Lessee's leasehold interest in the Lands and interest in the Building is appointed or applied for the Lessee or appointed under an instrument or by order of a court; or
- (d) if a judgment, decree or order is entered by a court or competent jurisdiction adjudging the Lessee a bankrupt or insolvent or subject to the provisions of the *Bankruptcy and Insolvency Act* or determining that proceedings for re-organization, arrangement, adjustment, composition, liquidation, or any similar relief under the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act* or any law of Canada or any province thereof relating to bankruptcy or insolvency have been properly instituted otherwise than by the Lessee, provided that such judgment, decree or order is not in good faith contested by the Lessee; or
- (e) if any application or petition or certificate or order is made or granted for the winding up or dissolution of the Lessee voluntary or otherwise,

then the receiver, interim-receiver, receiver-manager, liquidator, custodian or trustee will have the right to disclaim this Lease or to hold and retain the Lands and the Buildings for a period not exceeding six months from the effective date of any such appointment, receiving order, assignment, judgment, decree, order or the commencement of dissolution or winding up, as the case may be, or until the expiration of the Term, whichever first happens on the same terms and conditions as the Lessee might have held the Lands and the Buildings had no such appointment, receiving order, assignment, judgment, decree or order been made or dissolution or winding-up commenced.

18.2 Election of Parties

If the receiver, interim-receiver, receiver-manager, trustee, liquidator or custodian holds and retains the Lands and the Buildings as set out in section 18.1 they must during the six-month period referred to in section 18.1, either:

- (i) surrender possession at any time and the Term will thereupon terminate; or
- (ii) upon approval of the court as hereinafter provided, sell, transfer or otherwise dispose of all the interest of the Lessee in this Lease and the Lands and the Buildings for the remainder of the Term or any part thereof and all the rights of the Lessee hereunder notwithstanding anything to the contrary in Article 16 contained if the Supreme Court of British Columbia upon the application of such receiver, interim-receiver, receiver-manager, liquidator, custodian or trustee and after 14 days' written notice of such application to the Lessor, approves such sale, transfer or disposition; or
- (iii) continue as tenant for the balance of the Term remaining provided that the receiver, interim-receiver, receiver-manager, liquidator, custodian or trustee attorns as tenant to the Lessor and undertakes to be bound by and to perform the covenants and agreements of this Lease on the part of the Lessee to be performed and observed, and without limiting this Article 18 the Lessor shall not be liable to the Lessee, a sub-lessee or any

other party for any compensation whatsoever, unless otherwise provided for in this Lease.

18.3 Certain Rights of the Parties

The Lessor and the Lessee agree that:

- (a) Should the receiver, interim-receiver, receiver-manager, liquidator, custodian or trustee at any time before or after taking possession, disclaim this Lease or surrender possession to the Lessor, his liability and the liability of the estate of the Lessee and the Lessee for payment of Rent is limited to the period of time during which the receiver, interim-receiver, receiver-manager, liquidator, custodian or trustee remains in possession of the Lands and the Buildings for the purposes of the trust estate. If the receiver, receiver-manager, liquidator, custodian or trustee disclaims this Lease or surrenders possession, the Lessor or the Lessor's agents or employees authorized by the Lessor may immediately or at any time thereafter re-enter the Lands and the Buildings without being liable for any prosecution or damages therefor, and may repossess and enjoy the Lands and the Buildings and all fixtures and improvements therein and thereon, except fixtures and improvements which are of the nature of usual tenants' fixtures and normally removable by tenants and which are not part of the Buildings or the Lands and such receiver, interim-receiver, receiver-manager, liquidator, custodian or trustee must execute a surrender or assignment to the Lessor in registrable form.
- (b) Entry into possession of the Lands and the Buildings by the receiver, interim-receiver, receiver-manger, liquidator, custodian or trustee and its occupation by him while required for the purposes of the performance of his duties in his office will not be deemed to be evidence of an intention on his part to retain the Lands and the Buildings, nor affect his right to disclaim or to surrender possession under the provisions of Section 18.1 or 18.2.
- (c) If after occupation of the Lands and the Buildings, the receiver, interim-receiver, receiver-manager, liquidator, custodian or trustee elects to retain it and thereafter sells, transfers or otherwise disposes of this Lease, the Lands and the Buildings and all interests and rights of the Lessee therein and hereunder to a person approved by the court as provided by Section 18.1 or 18.2, their liability and the liability of the Lessee and their estate for the payment of any Rent, if any, is limited to the period of time during which they remain in possession of the Lands and the Buildings.

18.4 No Abatement of Rent

The receiver, interim-receiver, receiver-manager, liquidator, custodian or trustee must pay to the Lessor for the period during which the receiver, interim-receiver, receiver-manager, liquidator, custodian or trustee actually occupies the Lands and the Buildings under Section 18.1 or 18.2 hereof any Rent payable by the Lessee to the Lessor under this Lease during any such period of occupancy.

ARTICLE 19
DEFAULT BY LESSEE

19.1 Re-entry on Default by Lessee

The Lessor and the Lessee agree that, subject to the provisions of Sections 10.1, 17.2 and 21.1, if

- (a) the Lessee defaults in payment of any Rent required to be paid to the Lessor by any provision of this Lease, and such default continues for a period of 60 days after written notice of intention to terminate this Lease by reason of such default has been given by the Lessor to the Lessee,
- (b) subject to Section 4.4(b) and Section 10.1, the Lessee defaults in ensuring Commencement of Construction of the Building by the dates set forth in Section 4.3, and the default continues for a period of 60 days after written notice of intention to terminate this Lease by reason of such default has been given by the Lessor to the Lessee, or
- (c) subject to Section 4.4(b) and Section 10.1, the Lessee defaults in ensuring that the Building is Substantially Completed by the dates set forth in Section 4.3, and the default continues for a period of 60 days after written notice of intention to terminate this Lease by reason of such default has been given by the Lessor to the Lessee,

the Lessor or the Lessor's agents or employees authorized by the Lessor may immediately or at any time thereafter re-enter the Lands and the Building without being liable to any prosecution or damages therefor and may repossess and enjoy the Lands, the Building and all fixtures and improvements on the Lands except fixtures and improvements which are of the nature of usual tenants' fixtures and normally removable by tenants, and which are not part of the Buildings or the Lands, as liquidated damages, without such re-entry and repossession constituting a forfeiture or waiver of the Rent paid or to be paid to the Lessor, all of which Rent may be retained by the Lessor as liquidated damages and not as a penalty [provided however that where the Lessee has defaulted in the Commencement of Construction or the Substantial Completion of the Building as set forth in Section 19.1(b) and 19.1(c), as applicable, then a portion of the Basic Rent may be refunded to the Lessee as provided in Section 4.4(d)] and without forfeiture or waiver of the covenants to be performed by the Lessee up to the date of such re-entry and repossession.

19.2 Forfeiture on Certain Other Defaults by Lessee

The Lessor and the Lessee agree that, subject to the provisions of Sections 10.1, 17.2 and 21.1, if

- (a) the Lessee defaults in performing or observing any of its covenants or obligations under this Lease (other than those referred to in Section 19.1) and the Lessor has given to the Lessee notice of such default and at the expiration of 60 days after the giving of such notice the default continues to exist or, in the case of a default which cannot with due diligence be cured within the period of 60 days aforesaid, the Lessee fails to proceed promptly after the giving of such notice to cure such default; and
- (b) the Lessor desires to re-enter the Lands and to repossess and enjoy the Lands and the Buildings and all fixtures and improvements thereon (except fixtures and improvements

which are of the nature of usual tenants' fixtures and normally removable by tenants, and which are not part of the Lands and the Buildings),

the Lessor must unless the Lessee voluntarily surrenders the Lands and the Buildings to the Lessor, apply to the Supreme Court of British Columbia, upon not less than 14 days' notice to all persons interested in the Lands and the Buildings, for a court order that, either:

- (i) the interest of the Lessee in this Lease and the Lands and the Buildings for the remainder of the Term and all the rights of the Lessee hereunder be sold by public auction or private sale on such terms and conditions as the Court deems fair and equitable in the circumstances, the proceeds therefrom to be distributed, after all Rent and other money due to the Lessor hereunder is paid to the Lessor, in accordance with the priorities of the persons interested as aforesaid as ascertained by the Court upon enquiry or reference; or
- (ii) the Lessor or the Lessor's agents or employees be authorized to re-enter the Lands and the Buildings without being liable to any prosecution or damages therefor, and repossess and enjoy the Lands and the Buildings and all fixtures and improvements (except for fixtures and improvements which are of the nature of usual tenants' fixtures and normally removable by tenants, and which are not part of the Buildings or the Lands), as liquidated damages, without such re-entry and repossession causing a forfeiture or waiver of the Rent and other money paid or to be paid to the Lessor, all of which Rent may be retained by the Lessor as liquidated damages and not as a penalty and without forfeiture or waiver of the covenants to be performed by the Lessee up to the date of such re-entry and repossession, and

in ordering such sale or re-entry, the Court may direct the LTO Registrar to register a discharge of the Lessee's interest in the Lands and the Buildings. The Lessor will not be responsible for any loss to any such person interested, which loss may arise by reason of any such sale or re-entry unless the same occurs by reason of the wilful neglect or default of the Lessor.

19.3 Right to Cure

The Lessor and the Lessee agree that if the Lessee defaults in performing or observing any of its covenants or obligations under this Lease and the Lessor has given to the Lessee notice of such default and at the expiration of 60 days after the giving of such notice the default continues to exist or, in the case of a default which cannot with due diligence be cured within the period of 60 days aforesaid, the Lessee fails to proceed promptly after the giving of such notice to cure such default, the Lessor will have the right and licence, at any time, and from time to time, without any liability for trespass or otherwise, to enter upon the Lands and Buildings to cure the default of the Lessee, and any costs so incurred by the Lessor in curing such default, will be payable to the Lessor under this Lease as Additional Rent. Without limitation, any amount paid by the Lessor in making such repairs to the Lands and the Buildings or any part thereof, together with all costs and expenses of the Lessor, must be reimbursed to the Lessor by the Lessee on demand together with:

- (a) interest at the rate of six percent (6%) per annum above the Prime Rate from the date incurred until paid; and
- (b) an administrative charge in an amount of fifteen percent (15%) of such amount paid by the Lessor,

and may be recovered by the Lessor as Additional Rent.

19.4 Remedies of Lessor are Cumulative

The remedies of the Lessor specified in this Lease are cumulative and are in addition to any remedies of the Lessor at law or equity. No remedy will be deemed to be exclusive, and financial damages are not an adequate remedy, and the Lessor may from time to time have recourse to one or more or all of the available remedies specified herein or at law or equity. In addition to any other remedies provided in this Lease, the Lessor will be entitled to restrain by injunction any violation or attempted or threatened violation by the Lessee of any of the covenants or agreements hereof.

19.5 Waiver by Lessor

The failure of the Lessor to insist upon the strict performance of any covenant or agreement of this Lease will not waive such covenant or agreement, and the waiver by the Lessor of any breach of any covenant or agreement of this Lease will not waive such covenant or agreement in respect of any other breach. The receipt and acceptance by the Lessor of rent or other monies due hereunder with knowledge of any breach of any covenant or agreement by the Lessee will not waive such breach. No waiver by the Lessor will be effective unless made expressly in writing.

ARTICLE 20 COVENANTS OF LESSOR

20.1 Covenant Respecting Charges and Encumbrances

The Lessor covenants with the Lessee that the Lessor has a good and marketable title in fee simple to the Lands and that the Lessor has not at any time hereto before made, done, committed, executed or wilfully or knowingly suffered any act, deed, matter or thing whatsoever whereby or by means whereof the Lands or any part thereof are charged or encumbered in title or estate other than the subsisting Permitted Encumbrances, the exceptions and reservations contained in the original grant of the Lands from the Crown and any restrictive covenants and/or easements and/or rights of way in favour of the District or other public bodies which may be agreed to by the Lessee to be registered against the Lands as of the Effective Date.

20.2 Lessor Estoppel Certificates

The Lessor agrees to provide (at the written request of, and at the sole cost of, the Lessee from time to time during the Term and in a form to be prepared by the Lessee, acting reasonably) estoppel certificates confirming the key terms of this Lease and whether the Lessee is then in default of any of the Lessee's obligation under this Lease.

20.3 Covenant Respecting Authority to Lease

The Lessor covenants with the Lessee that it now has in itself good right, full power and authority to lease the Lands to the Lessee in the manner and according to the intent of this Lease.

ARTICLE 21

DISPUTE RESOLUTION

21.1 Dispute Resolution

If a dispute arises between the parties relating to this Lease, or arising out of this Lease, the parties agree to use the following procedure as a condition precedent to any party pursuing other available remedies:

- (a) The parties shall attempt in good faith to resolve the dispute promptly by negotiation. However, at any time, a party may give the other party written notice (the “**Initial Notice**”) of any dispute not so resolved. Within 30 days after delivery of an Initial Notice, the recipient party shall deliver to the other a written response. Both the Initial Notice and the response must include a statement of that party’s position, a summary of arguments supporting that position, and the name and contact particulars of the person who will represent that party and of any other person who will accompany the representative. Within 60 days after delivery of the Initial Notice, the representatives of the parties (and any persons intended to accompany same as specified in the Initial Notice or response, as applicable) shall meet at mutually acceptable times and places, as often as they reasonably deem necessary, to attempt to resolve the dispute.
- (b) All negotiations pursuant to Section 21.1(a) are confidential and are to be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.
- (c) If the negotiations pursuant to Section 21.1(a) are not successful, either party may notify the other by written notice (the “**Dispute Notice**”) of the existence of a dispute and a desire to resolve the dispute by mediation. If the other party agrees to submit the dispute to mediation, the parties will bear equally the costs of mediation. The parties will jointly appoint a mutually acceptable mediator, seeking assistance from the roster organization defined in the Notice to Mediate (General) Regulation (as amended or replaced), if they have been unable to agree upon such appointment within 30 days following delivery of the Dispute Notice. The parties agree to participate in good faith in the mediation and negotiations related thereto for a period of 30 days following appointment of the mediator, or for such longer period as the parties may agree. If the parties are not successful in resolving the dispute through mediation, or if the mediation has not commenced within 90 days following the delivery of the Dispute Notice, then either party may initiate litigation proceedings upon 14 days’ written notice to the other parties, provided, however, that the parties may agree to proceed by way of arbitration instead of litigation.
- (d) Notwithstanding any other provision of this Lease, a party may seek injunctive relief (whether as a temporary restraining order, preliminary injunction or otherwise) or specific performance and this Article 21 will not apply to any such action or proceeding.

ARTICLE 22

CERTAIN COVENANTS AND AGREEMENTS OF LESSEE

22.1 Conduct on Demised Premises

Taking into account that during construction of the Buildings, the Lands will be operated as a normal construction site, the Lessee covenants and agrees with the Lessor that it will not carry on or do, nor allow to be carried on or done upon the Lands or in the Buildings any work, business or occupation which may be a nuisance or which may be contrary to any Applicable Law for the time being in force.

22.2 Covenant Respecting Charges and Encumbrances

- (a) In this Section;
 - (i) “**Assumed Agreements**” means, collectively, all charges or encumbrances registered against title to the Lands and all agreements filed as legal notations on title to the Lands as of the Effective Date;
 - (ii) “**Ongoing Benefits**” means all rights, benefits and interest of a party derived from and under each of the Assumed Agreements; and
 - (iii) “**Ongoing Obligations**” means all covenants, terms, provisos, stipulations, conditions, obligations and liabilities of a party contained in, existing by virtue of or arising out of each of the Assumed Agreements, including, without limitation, the obligations and responsibilities in respect of ongoing payment obligations and liabilities and the performance of all indemnities and releases.
- (b) For the Term, the Lessor hereby assigns, conveys and transfers to the Lessee the Assumed Agreements and the Ongoing Benefits of the Lessor, as owner of the Lands, for the sole use and benefit of the Lessee, all without the requirement or necessity of any further acts by or deliveries from the Lessor or the Lessee.
- (c) For the Term, the Lessee hereby assumes the Assumed Agreements and the Ongoing Obligations of the Lessor, as owner of the Lands and covenants to perform all Ongoing Obligations of the Lessor in accordance with the terms of the Assumed Agreements, except as otherwise agreed to by the Lessor and the Lessee in writing. The assumption made hereby is made in addition to, and without limiting any provision of an Assumed Agreement that provides that upon the deposit of a leasehold strata plan for the Lands, such as the leasehold strata plan for this Lease, the strata corporation created thereby will become responsible for and automatically assume, without the need for further documentation, all of the Ongoing Obligations of the owner of the Lands and the Lessor.
- (d) The Lessee does hereby acknowledge and agree that the assumption under the Assumed Agreements and the Ongoing Obligations is made for the benefit of the Lessor and the other parties to the Assumed Obligations and may be enforced by such other parties directly against the Lessee, if applicable.

ARTICLE 23

SURRENDER OF LEASE

23.1 Surrender of Lease

At the expiration or sooner determination of the Term (and except following delivery of a Surrender Notice under Section 8.3), the Lessee must surrender the Lands and the Buildings to the Lessor in the condition in which they were required to be kept by the Lessee under the provisions of this Lease, except as herein otherwise expressly provided. The Lessee will not be entitled to any compensation from the Lessor for surrendering and yielding up to the Lessor, the Lands and the Buildings as aforesaid except as otherwise provided in this Lease or the Model Strata Lot Lease.

ARTICLE 24

QUIET ENJOYMENT AND OWNERSHIP OF LESSEE'S FIXTURES

24.1 Covenant for Quiet Enjoyment

The Lessor covenants and agrees that if the Lessee performs the Lessee's covenants under this Lease, the Lessee may peaceably enjoy and possess the Lands for the Term, without any interruption or disturbance whatsoever from the Lessor or any other person, firm or corporation lawfully claiming from or under the Lessor, provided however that nothing in this Section 24.1 will limit the rights of access reserved by the Lessor under Section 7.3, the rights of inspection conferred upon the Lessor by Section 12.1, the right of the Lessor to show the Lands and the Buildings and to post notice, under Section 12.2.

24.2 Nothing in this Lease limits the District's powers as a government to enforce its Applicable Laws.

24.3 Ownership of Lessee's Fixtures

The Lessee may confer upon Mortgagees, secured lenders, tenants or occupants of the Buildings the right of property in, or the right to remove fixtures or improvements which are of the nature of usual tenants' fixtures and normally removable by tenants, and which are not fixtures to the Buildings or the Lands.

Subject to Article 8, the Lessee must make good or cause such tenants to make good, any damage to the Buildings caused by any removal of the tenants' fixtures.

ARTICLE 25

OVERHOLDING

25.1 Overholding

The Lessee covenants and agrees with the Lessor that if the Lessor in writing consents to overholding and the Lessee holds over and if the Lessor accepts rent after the expiration of the Term, the new tenancy thereby created will only be a tenancy from month to month, at a rent which is the fair market rent of the Lands and Buildings as agreed between the Lessor and the Lessee, or, failing such agreement, as determined pursuant to Article 21, and not a tenancy from year to year and will be subject to the terms,

covenants and conditions herein contained so far as the same are applicable to a tenancy from month to month.

ARTICLE 26

CONVERSION OF GROUND LEASE UNDER STRATA PROPERTY ACT

26.1 Leasehold Strata Plan

For the Building on the Lands that the Lessee intends to stratify in accordance with the provisions of the *Strata Property Act*:

- (a) the Lessee must prepare or cause to be prepared as soon as reasonably possible after the Commencement Date the Leasehold Strata Plan, the same to be prepared in accordance with the provisions of the *Strata Property Act*;
- (b) the Lessee must deliver the Leasehold Strata Plan to the Lessor and the Lessor agrees to deliver to the Lessee its written consent to the registration of the Leasehold Strata Plan for filing in the LTO if the Leasehold Strata Plan has been prepared in accordance with the provisions in that regard contained in the *Strata Property Act*;
- (c) as soon as reasonably possible after the written consent of the Lessor has been delivered, the Lessee must deposit for registration the Leasehold Strata Plan in the LTO in accordance with the provisions of the *Strata Property Act* and the *Land Title Act* in respect of the Leasehold Strata Plan; and
- (d) the Lessee acknowledges and confirms to the Lessor that it is the sole responsibility of the Lessee to comply with the requirements of *Strata Property Act* such that the Leasehold Strata Plan may be accepted by the LTO Registrar for deposit and registration in the LTO as aforesaid.

26.2 Conversion of Ground Lease

It is understood and agreed between the Lessor and the Lessee that the deposit of the Leasehold Strata Plan will, in accordance with the provisions of Part 12 of the *Strata Property Act*, operate as a conversion of this Lease into individual leases in the name of the Lessee in respect of the interest of the Lessor in each Strata Lot subject to the applicable terms and conditions contained in this Lease and in the Model Strata Lot Lease and to the provisions of the *Strata Property Act* and the regulations made thereunder. From and after the conversion of this Lease under the *Strata Property Act* as aforesaid, each Strata Lot will be held during all of the unexpired residue of the Term then remaining separately from and independently of each of the other Strata Lots as if each Strata Lot had been demised to the Lessee by separate leases in the form of the Model Strata Lot Lease.

26.3 Execution of Model Strata Lot Lease by Strata Corporation

The Lessee covenants and agrees with the Lessor that within 10 days after the deposit of the Leasehold Strata Plan in the LTO and prior to the assignment of any of the Strata Lots the Lessee will deliver to the Lessor a lease in the form of the Model Strata Lot Lease executed by the Lessee and the Strata Corporation together with a resolution of the Strata Corporation to authorize the Strata Corporation to enter into and exercise the said lease. The Lessor must upon receipt of the executed lease, execute the

same and return the same to the Lessee, and the Lessee must cause the Model Strata Lot Lease to be deposited in the LTO.

26.4 Release from Liability

The Lessor covenants and agrees with the Lessee that the Lessee, but not including any lessee, sublessee or tenant of the Lessee or any other party claiming under the Lessee or any party to whom the Lessee assigns, transfers or conveys a Strata Lot under Section 16.2(e) of this Lease or Article 17 of the Model Strata Lot Lease, will be released and discharged from any and all of its liabilities and obligations under the covenants, terms and conditions contained in the Model Strata Lot Lease in respect of each Strata Lot on the date which is the later of:

- (a) the date the Lessee's leasehold interest in the Strata Lot is assigned to the first purchaser thereof; or
- (b) the date of Substantial Completion of the Buildings as certified by the Architect,

if the Lessee has paid the Basic Rent, Additional Rent, taxes and any other monies required to be paid to that date under this Lease and has observed and performed the covenants and agreements herein to be performed by the Lessee up to and including the said date.

26.5 Release of Lessee Obligations

The Lessor agrees that, while otherwise having the right to do so, it will refrain from pursuing its remedies hereunder against the Lessee for a default under the Model Strata Lot Lease in respect to which the Lessee has been released in accordance with the provisions of Section 26.4, except as expressly provided in this Lease.

ARTICLE 27

NOTICE

27.1 Notice

Any notice to be given under this Lease will be in writing and will be validly given if delivered, transmitted by email or mailed in British Columbia by prepaid registered post to the parties as follows:

- (a) To the Lessee at:

●
#404 – 197 Forester Street
North Vancouver, BC V7H 0A6

Attention: Oliver Webbe

Email: oliver@darwin.ca

with a copy to the Lessee's Solicitors at:

DENTONS CANADA LLP
20TH Floor 250 Howe Street
Vancouver, BC V6C 3R8

Attention: Brigham H. Jagger
Email: brigham.jagger@dentons.com

(b) To the Lessor at:

THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER
Attention: Corporate Officer
750 17th Street
West Vancouver, BC V7V 3T3

Attention: Mark Panneton
E-mail: mpanneton@westvancouver.ca and corporateofficer@westvancouver.ca

with a copy to the Lessor's Solicitors at:

LIDSTONE & COMPANY LAW CORPORATION
1300 – 128 Pender Street West
Vancouver, BC V6B 1R8

Attention: Don Lidstone
Email: lidstone@lidstone.ca

or to such other address or email as a party may advise the other by written notice hereunder. Any notice addressed and provided as aforesaid will be deemed to have been given on the day of delivery or transmission by email if a Business Day, and if not a Business Day, then on the next Business Day or if mailed, on the third Business Day following the posting thereof. Notices will not be mailed during the currency of a postal strike, dispute or slowdown, and during such time, notice will only be effective if emailed or transmitted (without a failure notice) or if delivered.

ARTICLE 28

CONDITION OF LANDS

28.1 Condition of Lands

The Lessee hereby acknowledges and agrees that (except as expressly provided for herein or otherwise agreed between the Lessee and the District):

- (a) the Lessee is acquiring the Lands on an “as is and where is” basis with no representations or warranties as to its condition, environmentally, geotechnical or otherwise, or its suitability for the Lessee's purposes;

- (b) the Lessee hereby waives any requirement for the Lessor to provide the Lessee with a site profile under the *Environmental Management Act* (British Columbia);
- (c) the Lessee is acquiring the Lands and entering into this Lease relying on its own inspections and not representations, warranties or covenants of the Lessor;
- (d) there are no representations, warranties, guarantees, agreements or conditions, whether direct or collateral, or express or implied, which induced the Lessee to enter into this Lease or on which reliance is placed by the Lessee, or which affects this Lease or the Lands, other than as specifically set out in this Lease or any other agreement entered into between the Lessee and the Lessor or the District;
- (e) the Lessee is relying on its own due diligence in reviewing any documents, general information or other materials provided by the Lessor to the Lessee or made available to the public (collectively, the “**Deliverables**”) and that the Deliverables are not intended to constitute a representation or warranty as to any of the contents thereof on the part of the Lessor or the Lands; and
- (f) the Lessor neither makes or gives any representation, warranty or covenant with respect to the environmental condition of the Lands including, without limitation, any representation, warranty or covenant as to whether or not the Lands contain any waste, hazardous or toxic wastes or other environmentally sensitive or unwanted substances of any nature whatsoever.

ARTICLE 29 MISCELLANEOUS

29.1 New Home Warranty Program of British Columbia

If and to the extent required in accordance with the *Home Owner Protection Act*, S.B.C. 1998, Ch. 31 (the “**Home Owner Protection Act**”), the Lessee covenants and agrees with the Lessor to enroll each dwelling unit forming part of the Buildings which the Lessee commences to construct in accordance with Section 4.1 of this Lease, if any, with a new home warranty provider who has been approved under the *Home Owner Protection Act*, S.B.C. 1998, Ch. 31 (the “**Home Warranty Program**”) and to provide the Lessor with evidence satisfactory to the Lessor that such dwelling units, if any, have been so enrolled. If the Home Warranty Program terminates prior to all dwelling units having been enrolled in the same, then the Lessee must enroll the remaining dwelling units in such other home warranty program as may then be available in the Province of British Columbia that is satisfactory to the Lessor, but if no such alternate program is then available, the Lessee will be relieved from its obligations under this Section with respect to the balance of the dwelling units then remaining to be constructed and not previously enrolled in the Home Warranty Program.

29.2 Statements by Lessor

The Lessor and the Lessee agree that at any time and from time to time upon not less than 30 days prior request by the other party, each will execute, acknowledge and deliver to the other a statement in writing certifying:

- (a) that this Lease is unmodified and in full force and effect or if there have been modifications that the same are in full force and effect as modified and identifying the modifications;
- (b) the dates to which any Rent and other charges have been paid and the request must specify the charges in respect of which such information is required; and
- (c) that, so far as the maker of the statement knows, without having conducted any searches or made any particular enquiries, the party who requests the statement is not in default under any provisions of this Lease, or, if in default, the particulars thereof.

The certification will be provided by the Lessor on the following conditions:

- (d) that neither the Lessor nor the party signing on behalf of the Lessor be liable for any damage or expense should for any reason, including, without limitation, negligence, the information provided be inaccurate, incomplete or misleading; and
- (e) that should any or all of the information be inaccurate, incomplete or misleading, for any reason, including, without limitation, negligence, the Lessor will, as against any person or corporation who may rely on the contents of this certification statement, be able to assert and enforce its full rights in strict accordance with this lease as if this certification statement had not been signed on behalf of the Lessor and as if any or all persons and corporations who may rely on the contents of the certification statement had not relied on the contents of the certification statement.

29.3 Lease Registration

The Lessee must register this Lease in the LTO and all costs and expenses in connection with the registration shall be borne by the Lessee. The Lessor shall, if requested by the Lessee, cooperate with the Lessee with respect to the registration of this Lease. The Lessee acknowledges and agrees that upon the request of the Lessor at the expiration or earlier termination of this Lease, the Lessee will discharge such registration at its sole cost and expense.

29.4 Time

Time is of the essence of this Lease, save as herein otherwise provided.

29.5 Amendments

This Lease may not be modified or amended except by an instrument in writing of equal formality herewith executed by the Lessor and the Lessee or by the successors or assigns of the Lessor and the successors or assigns (or permitted assigns, as applicable) of the Lessee.

29.6 **Enurement**

It is further agreed and declared by the Lessor and the Lessee that these presents extend to, are binding on and enure to the benefit of the Lessor and the Lessee and the successors and assigns of the Lessor and the successors or assigns (or permitted assigns, as applicable) of the Lessee.

29.7 **Approval or Consent**

A reference in this Lease to approval or consent of the Lessor shall be a reference to approval by the Lessor's Chief Administrative Officer or their designate. Nothing in this section precludes the Chief Administrative Officer from referring an approval or consent to the District's Council.

29.8 **Powers Preserved**

Except as expressly set out in this Lease, nothing contained or implied in this Lease shall fetter in any way the discretion of the District or the District's Council. Further, nothing contained or implied in this Lease shall derogate from the obligations of the Lessee under any other agreement with the District or, if the District so elects, prejudice or affect the District's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Community Charter* or the *Local Government Act*, as amended or replaced from time to time, or act to fetter or otherwise affect the District's discretion, and the rights, powers, duties and obligations of the District under all public and private statutes, by-laws, orders and regulations, which may be, if the District so elects, as fully and effectively exercised in relation to the Project or Parcel B as if this Lease had not been executed and delivered by the Lessee and the District.

IN WITNESS WHEREOF the Lessor and the Lessee have hereunto caused this Lease to be executed on the Form C and Form D respectively to which this Lease is attached by the signatures of their respective proper officers duly authorized for such purpose.

SCHEDULE A

1. The encumbrances, rights, and exceptions, restrictions, provisos, conditions and reservations referred to in Section 23(2) of the *Land Title Act*.
2. Applicable development/subdivision charges relating to the Project and/or the Lands.
3. A cross access agreement among the Lessor, in its capacity as a governmental authority, the Lessor, as the fee simple owner of the Lands and the Lessor, as the fee simple owner of Parcel A and for the shared use by the owners (including any leasehold owners of Parcel A and the Lands) of a single underground parking ramp and other building elements that arise from shared use of portions of the ground level landscaping and a section 219 Land Title Act covenant in favour of the Lessor restricting the use of the Lands, except in accordance with such cross access agreement.
4. The following legal notations, liens, charges and encumbrances registered against the Lands:
 - a. Legal Notations:
 - i. Nil
 - b. Charges, Liens and Interests
 - i. No Build Covenant

SCHEDULE B
MODEL STRATA LOT LEASE

BETWEEN:

THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER
750 17th Street
West Vancouver, BC V7V 3T3

AND:

●
#404 – 197 Forester Street
North Vancouver, BC V7H 0A6

AND:

THE OWNERS, LEASEHOLD STRATA PLAN EPS
●, having an office at ●
●, British Columbia

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MODEL STRATA LOT LEASE

BETWEEN:

THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER

750 17th Street
West Vancouver, BC V7V 3T3

(the “**Lessor**”)

AND:



#404 – 197 Forester Street
North Vancouver, BC V7H 0A6

(the “**Lessee**”)

AND:

THE OWNERS, LEASEHOLD STRATA PLAN EPS

- , having an office at •
- , British Columbia

(the “**Strata Corporation**”)

NOW THIS INDENTURE WITNESSES that in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Lessee to be paid, observed and performed, the Lessor has demised and leased and by these presents does demise and lease unto the Lessee and the Lessee does hereby take and rent the Strata Lot upon and subject to the conditions hereinafter expressed.

TO HAVE AND TO HOLD the Strata Lot for and during the Term.

YIELDING AND PAYING to the Lessor in each and every of the years during the Term rent as hereinafter provided.

This Lease is made upon and subject to the following covenants and conditions which each of the Lessor and the Lessee and the Strata Corporation (hereinafter defined), respectively, agree to keep, observe and perform.

ARTICLE 1 DEFINITIONS

1.1 For the purposes of this Lease:

- (a) “**Additional Rent**” means the amounts, other than Basic Rent, which the Lessee must pay under Sections 3.4, 4.1, 4.4, 4.5, 5.1, 6.3, 8.10, 8.12, or 9.3 together with any other additional amounts which shall be added under this Lease to and made part of Additional Rent;

- (b) **"Applicable Laws"** means all provisions of law including, without limitation, municipal, regional, provincial and federal legislative enactments including, without limitation, all police, fire and sanitary regulations, standards of maintenance, zoning and building bylaws, and any municipal, regional, provincial, federal, other governmental regulations of the District, including, without limitation, the Land Use Requirements which relate to the construction of the Buildings, to the equipment and maintenance of the Buildings, to the operation, occupation and use of the Buildings or the Lands to the extent that the Lessee operates, occupies and uses the Buildings or the Lands whether by subletting the same or any part thereof or otherwise, and to the making of any repairs, replacements, alterations, additions, changes, substitutions or improvements of or to the Buildings the Lands or any part thereof;
- (c) **"Architect"** means the architect as the Lessee may appoint from time to time, who shall be a member in good standing of the Architectural Institute of British Columbia;
- (d) **"Basic Rent"** has the meaning ascribed thereto in Section 3.1 of this Lease;
- (e) **"Builders Lien Act"** means the *Builders Lien Act*, S.B.C. 1997, Ch. 45, as amended or replaced from time to time;
- (f) **"Building"** means a structure sheltering a use that is constructed on the Lands, including without limitation, hard landscaping, together with all replacements, alterations, additions, changes, substitutions, improvements or repairs, all Common Property, all Common Facilities and other improvements from time to time constructed on or affixed or appurtenant to the Lands, and **"Buildings"** will have a corresponding meaning but pluralized;
- (g) **"Building Permit"** means a building permit issued by the District to the Lessee pursuant to an application submitted by or on behalf of the Lessee, with respect to the construction of a Building on the Lands, as such permit may be amended, extended or replaced from time to time;
- (h) **"Business Day"** means any day which is not a Saturday, Sunday or a day observed as a holiday under the Applicable Laws in the province of British Columbia;
- (i) **"Certificate of Occupancy"** means a document issued by the District in its capacity as a governmental authority certifying compliance of any Building constructed on the Lands with applicable building codes and other laws, and indicating such Building or Buildings to be in a condition suitable for occupancy, but does not include any such document issued for any sales centre in connection with the Project;
- (j) **"Claims"** has the meaning ascribed thereto in Section 14.4;
- (k) **"Commencement Date"** means the earlier of:
 - (i) the date of the District's issuance of the first Certificate of Occupancy; or
 - (ii) the date which is 60 months following the Effective Date;
- (l) **"Commencement of Construction"** means:

- (i) the District has issued a Building Permit to the Lessee by the District for a Building on the Lands; and
 - (ii) the Architect has certified that construction of the foundation and footings of the Building has been commenced by the Lessee;
- (m) **“Common Facility”** and **“Common Facilities”** has the same meaning as under the *Strata Property Act*;
- (n) **“Common Property”** has the same meaning as under the *Strata Property Act*;
- (o) **“Deposit”** has the meaning ascribed thereto in Section 3.1;
- (p) **“Development Permit”** means a development permit issued by the District to the Lessee pursuant to an application submitted to the District by or on behalf of the Lessee, with respect to the development of a Building on the Lands, as such permit may be amended, extended or replaced from time to time;
- (q) **“Development Procedures Bylaw”** means the Development Procedures Bylaw No. 4940, 2017, as amended or replaced before or after the Effective Date;
- (r) **“Dispute Notice”** has the meaning given to such term in Section 21.1(c);
- (s) **“District”** means:
 - (i) the geographical area within the boundaries of the District of West Vancouver; or
 - (ii) The Corporation of the District of West Vancouver in its capacity as a municipal government and not as the Lessor,as the context may require;
- (t) **“District’s Council”** means the council of The Corporation of the District of West Vancouver;
- (u) **“Effective Date”** shall have the meaning given to such term in the Ground Lease;
- (v) **“Environmental Contaminants”** means any contaminants, pollutants, hazardous, corrosive or toxic substances, flammable materials, explosive materials, radioactive materials, dangerous goods, microwaves, waste, urea formaldehyde, asbestos, noxious substances, compounds known as chlorobiphenyls, special waste, and any other substance or material, in quantities or concentrations exceeding allowable limits prescribed by Environmental Laws, the storage, manufacture, disposal, treatment, generation, use, transport, remediation, or release of which into the environment is prohibited, regulated, controlled, or licensed under Environmental Laws;
- (w) **“Environmental Laws”** means any laws, statutes, regulations, orders, bylaws, permits or lawful requirements of any governmental authority with respect to environmental protection, or regulating, controlling, licensing, or prohibiting Environmental Contaminants;

- (x) **“Ground Lease”** means that certain indenture of lease of the Lands dated for reference the ● day of ●, 2022 registered in the LTO under No. ● and made between the District, as Lessor and ●, as Lessee;
- (y) **“Indemnified Parties”** means the Lessor, in its capacity as landlord and owner of the Lands and the Strata Lots, the District, the District’s Council members, and the District’s officers, employees, volunteers, contractors, agents, solicitors, successors and assigns;
- (z) **“Initial Notice”** has the meaning given to such term in Section 21.1(a);
- (aa) **“Land Use Requirements”** means a provision of a bylaw, permit, plan, policy, guideline, regulation, resolution, order or any other similar document enacted or passed by the Province of British Columbia or the District’s Council, including the *Development Procedures Bylaw No. 4940, 2017, Official Community Plan Bylaw No. 4985, 2018, Zoning Bylaw No. 4662, 2010*, and the *Development Cost Charge Bylaw No. 3801, 1993*, as amended or replaced from time to time before or after the date of this Lease, and every other applicable District bylaw, and all other lawful District, Approving Officer or provincial requirements governing land use and the construction, renovation, maintenance, repair and replacement of a Building on the Lands;
- (bb) **“Lands”** means those lands in the District of West Vancouver, in the Province of British Columbia, more particularly described in Part 1 of this General Instrument;
- (cc) **“Leasehold Strata Plan”** means a strata plan deposited in the LTO under the *Strata Property Act* in which the land included in the strata plan is subject to this Lease;
- (dd) **“Lessee’s Solicitors”** means Dentons Canada LLP or such other lawyer or firm of lawyers as the Lessee may, by delivery of written notice to the Lessor at any time and from time to time, appoint to act as legal counsel to the Lessee in connection with any matter arising under or in relation to this Lease;
- (ee) **“Lessor’s Solicitors”** means Lidstone & Company Law Corporation or such other lawyer or firm of lawyers as the Lessor may, by delivery of written notice to the Lessee at any time and from time to time, appoint to act as legal counsel to the Lessor in connection with any matter arising under or in relation to this Lease;
- (ff) **“LTO”** means the Land Title Office;
- (gg) **“Model Strata Lot Lease”** means this Lease;
- (hh) **“Mortgage”** means a mortgage or mortgages upon or in respect of and specifically charging the leasehold interest of the Lessee in the Strata Lot or any part thereof and includes, without limitation, any debenture or deed of trust and mortgage to secure any bonds or debentures issued thereunder and any assignment or rents made to the Mortgagee as security;
- (ii) **“Mortgagee”** means a mortgagee under any Mortgage;
- (jj) **“Official Community Plan”** means Official Community Plan Bylaw No. 4985, 2018, as amended or replaced from time to time;

- (kk) **"Original Lessee"** means the Lessee named herein;
- (ll) **"Owner"** has the same meaning as under the *Strata Property Act*;
- (mm) **"Prime Rate"** means the annual percentage rate of interest established from time to time by the Royal Bank of Canada, Main Branch, Vancouver, British Columbia, or any successor bank, for loans to customers in Canada and designated by the Royal Bank of Canada as the prime rate, or any rate which may replace the prime rate in the future as a method for determining rates of interest to be charged;
- (nn) **"Project"** means the Lessee's proposed development on the Lands that consists of an approximately eight (8) storey leasehold residential strata development project;
- (oo) **"Property Taxes"** means all taxes, rates, duties, charges and assessments due and owing during the Term, including school and regional district taxes and charges, local service area rates and other charges which now are or shall be at any time during the Term levied, rated, charged or assessed against the Lands, the Buildings, all other structures, all machinery, equipment, facilities and other property of any nature whatsoever thereon and therein, whether such taxes, rates, duties, charges and assessments are charged by any municipal, parliamentary, legislative, regional, school or other authority including the District during the Term;
- (pp) **"Release"** means any release, discharge, emission, deposit, issuance, spray, escape, spill, or leak and shall also have the respective corresponding meanings (if any) given under Environmental Laws;
- (qq) **"Rent"** means the Basic Rent, Additional Rent and any other amounts the Lessee must pay to the Lessor under this Lease;
- (rr) **"Special Resolution"** means a special resolution passed by the Strata Corporation under the *Strata Property Act*;
- (ss) **"Strata Corporation"** means the corporation created by the provisions of the *Strata Property Act* upon the deposit of the Leasehold Strata Plan in the LTO;
- (tt) **"Strata Lot"** means a strata lot shown as such on the Leasehold Strata Plan;
- (uu) **"Strata Property Act"** means the *Strata Property Act*, S.B.C. 1998, Ch. 43, and amendments thereto, including without limitation, the *Strata Property Amendment Act*, S.B.C. 1999, Ch. 21 together with all regulations passed from time to time pursuant thereto, or, any successor legislation in effect from time to time;
- (vv) **"Substantial Completion"** and **"Substantially Completed"** in respect of a Building means:
 - (i) the District has issued a Certificate of Occupancy therefor; or
 - (ii) the Architect or engineer of the Lessee has issued a certificate to the Lessor, signed and sealed by the Architect or engineer, certifying that:

- (A) the Buildings are substantially complete in all material respects in a proper and workmanlike manner and in accordance with the applicable plans, specifications and supporting documents submitted to and accepted by the District of the Development Permit and any Building Permits for the Buildings have been based, except for deficiencies, the correction of which, in the opinion of the Architect or engineer is adequately ensured;
 - (B) all applicable building requirements and regulations of the District have been complied with by the Lessee except for deficiencies, the correction of which, in the opinion of the Architect or engineer is adequately ensured, and
 - (C) the Buildings are ready for occupancy,
- for the purposes other than Section 6.7(b), Substantial Completion may be in respect of portions of the Buildings;
- (ww) **"Term"** means the unexpired portion of the Term of the Ground Lease, save and except as modified by Article 26 of this Lease;
 - (xx) **"Termination"** has the same meaning as under Part 12 of the *Strata Property Act*;
 - (yy) **"Unavoidable Delay"** means any strike, lock-out or other labour dispute, material or labour shortage not within the control of the Lessee, stop work order issued by any court or tribunal of competent jurisdiction or other governmental order or embargo (provided that such order was not issued as the result of any act or fault of the Lessee or of any one employed by it directly or indirectly), fire or explosion, flood, wind, water, earthquake, snowfall, inclement weather affecting construction conditions, act of God, epidemic, pandemic or other similar circumstances beyond the reasonable control of the Lessee and not avoidable by the exercise of commercially reasonable effort or foresight by the Lessee;
 - (zz) **"Unit Entitlement"** has the same meaning as under the *Strata Property Act*; and
 - (aaa) **"Zoning Bylaw"** means the *Zoning Bylaw No. 4662, 2010*, as amended or replaced from time to time before or during the term of this Lease, including the Zoning Bylaw Amendment.

1.2 All the provisions of this Lease shall be deemed and construed to be conditions as well as covenants as though the words specifically expressing or importing covenants or conditions were used in each separate provision hereof.

1.3 Subject to the definitions established by section 1.1 of this Lease, definitions established in section 1.1 of the Ground Lease apply to this Lease.

1.4 The words "herein", "hereby", "hereunder" and words of similar import refer to this lease as a whole and not to any particular article, section or subsection hereof.

1.5 In this Lease:

- (a) reference to the singular includes a reference to the plural, and vice versa, as the context requires;
- (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Lease;
- (c) reference to a particular numbered section or article, or to a particular lettered schedule, is a reference to the correspondingly numbered or lettered article, section or schedule of this Lease;
- (d) if a word or expression is defined in this Lease, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- (e) reference to any enactment includes any regulation, orders or directives made under the authority of that enactment;
- (f) reference to an enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced from time to time during the Term, unless otherwise expressly provided;
- (g) all provisions are to be interpreted as always speaking;
- (h) reference to a "party" is a reference to a party to this Lease and to its respective successors, permitted assigns, trustees, administrators and receivers;
- (i) reference to a "day", "month", "quarter" or "year" is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided; and
- (j) the word "including" is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word "including".

1.6 Every provision of this Lease is a condition as well as covenant as though the words specifically expressing or importing a covenant or condition were used in each separate provision.

1.7 The following addenda are attached to and form part of this Lease:

Addendum A: Form C

Addendum B: Standard Charge Terms

Addendum C: Mortgage Security

Addendum D: Replacement, Repair or Reconstruction

Addendum E: Effect of the *Strata Property Act*

1.8 Nothing contained or implied in this Lease will prejudice or affect the District's rights, powers or duties in the exercise of its functions as a municipal government under any Applicable Laws.

1.9 It is agreed that the covenants, agreements, provisos and conditions contained in any Schedule attached to this Lease are part of this Lease and the Lessee agrees to be bound thereby.

ARTICLE 2 DEMISE AND POSSESSION OF THE STRATA LOT

2.1 The Lessor leases to the Lessee, and the Lessee leases from the Lessor, the Strata Lot for the Term, subject to the terms, conditions, covenants and other provisions of this Lease.

ARTICLE 3 BASIC RENT AND ADDITIONAL RENT

3.1 Rent

- (a) On the Effective Date, the Lessee covenants and agrees to pay to the Lessor as net basic rent the following amounts: \$22,195,000.00 (the “**Basic Rent**”).
- (b) The Lessor acknowledges receipt by the Lessor’s solicitors of a deposit in the amount of \$600,000.00 (the “**Deposit**”) which has been paid by the Lessee to the Lessor’s solicitors, in trust, prior to the Effective Date and which Deposit shall be applied as a credit against payment of the Basic Rent payment set forth in Section 3.1(a) above.

3.2 Payments Generally

Any payments of any monies by the Lessee to the Lessor of whatsoever nature required or contemplated by this Lease except payments arising under Article 4 hereof, shall be:

- (a) paid to the Lessor in lawful currency of Canada;
- (b) applied towards amounts expressed to be outstanding under this Lease, in the manner stipulated by the Lessor; and
- (c) deemed to be Rent, in partial consideration for which this Lease has been entered into, and shall be payable and recoverable as Rent, such that the Lessor shall have all rights and remedies against the Lessee for default in making any such payment which may not be expressly designated as Rent as the Lessor has for default in payment Rent.

3.3 Authorization to Lessor’s Solicitors

The Lessor and Lessee hereby irrevocably authorize and direct the Lessor’s Solicitors to hold and pay the Deposit to the Lessor on the Effective Date as a credit against payment of Basic Rent as contemplated in Section 3.1, without further notice to, or the consent of, the parties hereto.

3.4 Net Lease

Unless otherwise expressly stipulated herein to the contrary, all Rent required to be paid by the Lessee hereunder shall be paid without any deduction, abatement or set-off whatsoever, it being the intention of the Lessor and Lessee that all expenses, costs, payments and disbursements incurred in respect of the Lands, any Buildings or for any other matter or thing affecting the Lands, shall be borne by the Lessee,

that the Basic Rent paid on the Effective Date will be absolutely net to the Lessor and free of all abatements, set-off or deduction or Property Taxes, charges, rates, assessments, expenses, costs, payments or disbursements of every nature arising from or related to the Lands, any Buildings and that the Lessee shall pay or cause to be paid all such taxes, charges, rates, assessments, expenses, costs, payments and out goings as provided in the Lease.

3.5 Interest on amounts in Arrears

If any Rent payable to the Lessor is in arrears, such amounts shall bear interest, including interest on overdue interest, at the Prime Rate plus 6% per annum calculated monthly not in advance from the date due until paid, irrespective of whether or not the Lessor has demanded payment. The Lessor shall have all the remedies for the collection of such interest, if unpaid after demand, as in the case of Rent in arrears, but this stipulation for interest shall not prejudice or affect any other remedy of the Lessor under this Lease; provided that this Section 3.5 shall not apply to the Lessee's failure to pay Property Taxes under Sections 4.1 and 4.2 when due.

If the court declares or holds the Prime Rate to be void or unenforceable for any reason including uncertainty, then the rate of interest payable on amounts in arrears hereunder shall be 18% per annum calculated monthly not in advance from the date due until paid.

ARTICLE 4 PAYMENT OF TAXES, SERVICES, LICENSES AND PENALTIES

4.1 Payment of Property Taxes if Lands are Taxable

Save as otherwise provided in this Article 4, the Lessee will in each and every year during the Term not later than the day immediately preceding the date or dates on which Property Taxes imposed upon real property within the District of West Vancouver become due and payable whether monthly, quarterly, twice-yearly or otherwise, pay and discharge or cause to be paid and discharged all Property Taxes which now are or shall or may be levied, rated, charged or assessed against the Strata Lot all other structures, all machinery, equipment, facilities and other property of any nature whatsoever thereon and therein, whether such Property Taxes are charged by any municipal, parliamentary, legislative, regional, school or other authority including the District during the Term and will indemnify and keep indemnified the Lessor from and against payment of all losses, costs, charges and expenses occasioned by or arising from any and all such Property Taxes; and any such losses, costs, charges and expenses suffered by the Lessor may be collected by the Lessor as Additional Rent with all rights of distress and otherwise as reserved to the Lessor may be collected by the Lessor as Additional Rent with all rights of distress and otherwise as reserved to the Lessor in respect of rent in arrears. The Lessee further covenants and agrees that during the Term, it will deliver to the Lessor for inspection receipts for payments of all Property Taxes in respect of the Strata Lot, or any other structures, all machinery, equipment, facilities and other property of any nature whatsoever thereon and therein which were due and payable during the Term within 14 days following receipt by the Lessee of each of such receipts for payment. The Lessor shall, not later than 14 days following receipt of any assessment notices delivered to the Lessor by any taxing authority, relating to the Strata Lot, or any other structures, any machinery equipment, facilities and other property of any nature whatsoever thereon and therein, forward a copy thereof to the Lessee. The Lessee shall have the right from time to time to appeal any assessment of the Strata Lot or any other tax, rate, duty, charge or amount referred to in this Section 4.1 provided that such appeal shall be at the sole cost and expense of the Lessee. If in the future the Lessee is unable to appeal any assessment of the

Strata Lot or any other tax, rate, duty, charge or amount referred to in this Section 4.1 except in the name of the Lessor, then the Lessee shall have the right to appeal in the name of the Lessor.

For greater certainty, the Lessee will be responsible for the payments referred to in this Section 4.1 from the Effective Date.

4.2 Payment of Property Taxes if Lands are Exempt from Tax

The Lessee covenants and agreed with the Lessor that if during the Term, the Lands, the Buildings, all other structures, all machinery, equipment and facilities and other property of any nature whatsoever, thereon and therein, are by the provisions of any municipal, parliamentary, legislative or regional enactment exempt from taxation in whole or in part by reason of the Lessor's ownership of the Lands and they would otherwise have been subject to taxation, then the Lessee shall in each and every year during the Term that such exemption occurs pay to the Lessor as Additional Rent in like manner and time as taxes are to be paid under Section 4.1, an amount equal to the amount that but for such exemption would have been paid by the Lessee under Section 4.1 for taxes, rates, duties, charges, assessments, including school taxes and local improvement rates, and other charges. For such purpose in each year during the Term the following provisions shall apply:

- (a) if the District passes a bylaw or bylaws in advance of the passing of a rating bylaw or preparation of the real property tax roll for the current year providing for the payment of Property Taxes imposed or to be imposed upon real property with the District by monthly, quarterly or twice-yearly instalments and providing that the amounts of such instalments shall be percentage of the amount of Property Taxes payable on the real-property roll for the immediately preceding year, the Lessor shall deliver to the Lessee an advance tax statement or statements of the amount or amounts determined in accordance with such by-law or by-laws from time to time in respect of the Lands, the Buildings and all other structures, all machinery and equipment and facilities and other property of any nature whatsoever thereon and therein, and
- (b) after the passing of a rating bylaw or rating bylaws (as the case may be) by District establishing the rate or rates to be levied on real property with the District, for the current year, the Lessor shall determine the Additional Rent by applying the rate or rates of levy established by such rating bylaw or rating bylaws (as the case may be) to all, or such portion of the assessed value of the Lands, the Buildings and all other structures, all machinery, equipment, and facilities and other property of any nature whatsoever thereon and therein as the said rate or rates of levy are applied to other taxpayers in the District in like case, and the Lessor shall deliver to the Lessee a statement of the amount payable under this Section 4.2 after deducting all Property Taxes paid in advance for the current year.

The Lessee shall have the right from time to time to appeal any assessment of the Lands or Buildings or any other tax, rate, duty, charge or amount referred to in this Section 4.2, provided that such appeal shall be at the sole cost and expense of the Lessee.

For greater certainty, the Lessee will be responsible for the payments referred to in this Section 4.2 from the Effective Date.

4.3 District Services

The Lessee covenants and agrees with the Lessor to pay to the Lessor all District fees, charges, levies, imposts and any other amounts imposed by the District at the same time as the amount payable under Section 4.1 or Section 4.2 is payable or at such other time as may be permitted by any Land Use Requirements.

4.4 Delinquent Taxes

If the Lessee shall in any year during the Term fail to pay the taxes under Section 4.1 or Section 4.2 when due, the Lessee shall thereupon pay interest at the percentage rate or rates established by the District or any other taxing authority, for unpaid real property taxes in District, for delinquent taxes, but so that the Lessee shall only be obligated to pay such interest as would be payable by other taxpayers in the District.

4.5 Penalties Levied By the District under District Bylaws

The Lessee covenants with the Lessor to pay for or cause to be paid when due any fine validly imposed by the District pursuant for acts or things done in contravention of, or in violation of, any provision of any Land Use Requirements.

ARTICLE 5 PAYMENT FOR UTILITY SERVICES

5.1 Payment by Lessee

The Lessee covenants with the Lessor to pay for or cause to be paid when due to the providers thereof, including the District, all charges for gas, electricity, light, heat, power, telephone, water, sanitary sewers, storm sewers, cable and other utilities and services used in or supplied to the Strata Lot throughout the Term and will indemnify and keep indemnified the Lessor from and against payment of all losses, costs, charges expenses occasioned by or arising from any and all such charges, and any such loss, costs, charges and expenses which relate to such charges suffered by the Lessor may be collected by the Lessor as Additional Rent with all rights of distress and otherwise as reserved to the Lessor in respect of rent in arrears.

5.2 Payment by Strata Corporation

The Strata Corporation covenants with the Lessor to pay for or cause to be paid to the providers thereof, including the District, when due all charges for gas, electricity, light, heat, power, telephone, water, cable and other utilities and services used or supplied to the Common Property, Common Facilities or the Strata Corporation throughout the Term (unless such charges are payable by the Lessee under Section 5.1 and will indemnify the Lessor from and against payment of all losses, costs, charges and expenses occasioned by or arising from any and all such charges, and the Strata Corporation shall reimburse the Lessor for any such loss, costs, charges and expenses which relate to such charges suffered by the Lessor within 30 days after receipt of invoice therefor from the Lessor and in default thereof the Lessee's share of the amount to which the Lessor is entitled to reimbursement from the Strata Corporation (which share shall be determined as hereinafter set forth) may be recovered by the Lessor as Additional Rent

with all rights of distress and otherwise as reserved to the Lessor in respect of and as rent in arrears. In apportioning any amount to which the Lessor is entitled to reimbursement under this Section 5.2 such amount shall be borne by the Lessee in the proportion that the Unit Entitlement of the Lessee's Strata Lot bears to the aggregate Unit Entitlement of all of the Strata Lots from time to time.

ARTICLE 6 CONSTRUCTION

6.1 No Construction Obligations for Assignees of Strata Lots

The covenants of the Lessee, relating to construction of the Buildings, contained in Sections 6.4, 6.5, 6.6, and 6.7 of this Lease shall not be binding upon those parties to whom the Original Lessee assigns, transfers or conveys a Strata Lot if permitted under Section 16.2(e) of the Ground Lease or Article 17 of this Lease. The said covenants shall, nonetheless, bind the Original Lessee and its successors and assigns permitted under Sections 16.2(a) and 16.2(b) of the Ground Lease.

6.2 Limitation of Liability of the District

The Strata Corporation and those parties who are Lessees under this Lease by virtue of an assignment, transfer or conveyance of a Strata Lot under and in accordance with the Terms of Article 17 of this Lease, acknowledge and agree that the District and its Indemnified Parties, when involved in:

- (a) inspecting and approving plans; or
- (b) inspecting buildings, utilities, structures; or
- (c) inspecting other things,

requiring a permit for construction, renovation, repair or reconstruction, owe no legal duty of care to the Strata Corporation and/or the aforesaid Lessees on which a cause of action can be based, to ensure that plans, buildings, utilities, structures or other things so constructed, renovated, repaired or reconstructed on the Lands or parts thereof, comply with the Land Use Requirements, or Applicable Laws, including any other applicable codes, regulations, bylaws or enactments in respect of the Lands.

The Strata Corporation and the aforesaid Lessees further acknowledge and agree that the District is not liable for damages of any nature (including, without limitation, indirect or consequential damages such as loss of profits and/or loss of use and damage arising out of delays) sustained by the Strata Corporation and/or the aforesaid Lessees as a result of the neglect or failure, for any reason or in any manner, arising from any act of the District to:

- (d) discover or detect contraventions of; or
- (e) enforce,

the Land Use Requirements, or any other applicable codes, regulations, bylaws or other enactments in respect of the Strata Lots or the Lands.

6.3 Release and Indemnification of the Indemnified Parties

The Strata Corporation and those parties who are Lessees under this Lease by virtue of an assignment, transfer or conveyance of a Strata Lot under and in accordance with the Terms of Section 16.2 of the Ground Lease or Article 17 of this Lease do hereby remise, release and forever discharge and do hereby covenant and agree to defend, indemnify and save harmless the Indemnified Parties whether or not the Indemnified Parties have been negligent, from and against all damages, losses, actions, causes of actions, claims, demands, builder's liens, liabilities, judgments, expenses (including without limitation, loss of profits and loss of use and damage arising out of delays) which may arise or accrue to the Lessee or any person, firm or corporation against the Indemnified Parties arising out of or in any way connected with:

- (a) the construction of the Buildings;
- (b) their later renovation, repair and/or reconstruction from time to time, including without limitation, any failure to complete construction, renovation, repair and/or reconstruction of the Buildings, howsoever arising;
- (c) inspecting and approving plans or inspecting buildings, utilities, structures or other things requiring a permit for their construction; and
- (d) any neglect or failure for any reason or in any manner by the Indemnified Parties or any of their respective contractors or subcontractors, to:
 - (i) discover or detect contraventions of; or
 - (ii) enforce,

the Land Use Requirements or any other applicable codes, regulations, by-laws or enactments in respect of the Lands, the Strata Lot or lands elsewhere on the Lands. Nothing in the general law of suretyship shall operate to release the Strata Corporation or the aforesaid Lessees from their obligations under this release and indemnity.

6.4 Lessee to Construct Building

After the District has issued the Development Permit, or when an amendment to the Zoning Bylaw is adopted, the Lessee will as soon as is reasonably practicable apply to the District for a Building Permit (to the extent not already obtained or applied for with respect to the Building or Buildings to be constructed on the Lands) which application must comply with the Land Use Requirements. Upon receipt of a Building Permit from the District, the Lessee shall construct the Building, together with other facilities ancillary thereto and connected therewith on the Lands expeditiously and in good workmanlike manner in substantial accordance with the drawings, elevations, specifications (including, without limitation, the materials to be used), location on the Lands and exterior decoration and design all upon which the issuance of the Development Permit and the Building Permit by the District are based, and in compliance with the requirements of any applicable Development Permit and Building Permit.

6.5 Fire and Liability Insurance During Construction of Buildings

- (a) The Lessee shall effect or shall cause its contractor or contractors to effect prior to the Commencement of Construction of the Buildings, or any of them, and shall maintain and

keep in force until the insurance required under Article 8 shall have been effected, insurance:

- (i) protecting both the Lessee and the Lessor and the Lessor's officers and employees (without any rights of cross claim or subrogation against the Lessor) against claims for personal injury, death or property damage or other third party or public liability claims arising from an accident or occurrence upon, in or about the Lands and from any cause, including, without limitation, the risks occasioned by the construction of the Buildings, and to an amount reasonably satisfactory to the Lessor, being not less than \$10,000,000.00 per occurrence, for any personal injury, death, property or other claims in respect of any one accident or occurrence, and
 - (ii) protecting the Lessee and any Mortgagee from loss or damage (without any rights of cross claim or subrogation against the Lessor) to the Buildings and all fixtures, equipment, improvements and building materials on the Lands from time to time both during and after construction (but which may be by policies effected from time to time covering the risk during different phases of construction of the Buildings) against fire, earthquake and all other perils from time to time customarily included in the usual all risks builders' risk form of policy applicable to similar properties during construction and effected in the Province of British Columbia by prudent owners, and such other perils as the Lessor may reasonably require to be insured against to the full insurable value thereof at all times and in any event in the amount sufficient to prevent the Lessor or the Lessee being deemed co-insurer.
- (b) The proceeds of insurance which may become payable under any policy of insurance effected under this Section 6.5 shall be payable in accordance with the provisions of Section 8.7.
 - (c) Sections 8.3, 8.4, 8.5, 8.8, 8.10, 8.11 and 8.12 of Article 8 respecting insurance which are of general application shall apply to the insurance during construction of the Buildings required by this Section 6.5.

6.6 Application for Order For Sale Where the Lessee Defaults in Commencement of Construction or Substantial Completion

- (a) Subject to Section 6.6(b) and Article 11, if Commencement of Construction or Substantial Completion of the Buildings does not occur by the dates set forth in Section 6.7 and such default continues for a period of 60 days after written notice of intention to terminate this Lease by reason of such default has been given by the Lessor to the Lessee, then the Lessor shall have the right and option to apply to the Supreme Court of British Columbia for an order for sale as provided in Section 209 of the *Strata Property Act* and the provisions of Section 20.1(a) hereof shall apply.
- (b) The Lessor will not be entitled to terminate this Lease in respect of a delay of Commencement of Construction, if the Lessee has applied for and is actively and in good faith pursuing issuance of an excavation permit or Building Permit with respect to the Building or Buildings to be constructed on the Lands, or in respect of a delay of

Substantial Completion, has applied for and is actively and in good faith pursuing issuance of a Certificate of Occupancy with respect to the Building or Buildings on the Lands.

- (c) In the event of a dispute between the Lessor and the Lessee as to whether the Lessor is entitled to apply for an order for sale under the provisions of this Section 6.6 the Lessor and the Lessee agree Article 21 shall apply to such dispute.

6.7 Deadlines for Commencement of Construction and Substantial Completion of Buildings

The Lessee covenants and agrees with the Lessor that, subject always to Sections 11.1 and 18.3:

- (a) Commencement of Construction shall take place on or before the day which is 12 months after the Effective Date; and
- (b) the Buildings and required District works, services, and facilities required under the Development Permit and Building Permit shall be Substantially Completed as certified by the Architect on or before the day which is the fifth (5th) anniversary of the Effective Date.

ARTICLE 7 PERMITTED USES OF STRATA LOT

7.1 Permitted Uses of Strata Lot

The Lessee covenants and agrees with the Lessor that the Strata Lot (other than its share of the Common Property and Common Facilities) shall be used only for lawful uses, including, without limitation, those permitted by the Zoning Bylaw in effect as of the Effective Date, or as otherwise permitted under Applicable Laws. The Lessee will be solely responsible for ensuring that its use of the Strata Lot complies with the Zoning Bylaw.

7.2 Prohibited Use

The Lessee covenants and agrees with the Lessor that it will not carry on nor do, nor allow to be carried on nor done upon the Strata Lot any work, business or occupation which may be a nuisance or which may be improper, noisy or contrary to any law or to the Zoning Bylaw, Land Use Requirements, other District bylaws or to any other regulation of any other governments, governmental agencies or authorities having jurisdiction for the time being in force.

ARTICLE 8 INSURANCE

8.1 Insurance

At all times during the Term the Strata Corporation shall, at no expense to the Lessor, insure and keep insured or cause to be insured the Building and insurable improvements owned by the Strata Corporation with one or more companies licenced to do business in the Province of British Columbia against loss or damage on an "all risk" basis, including, by fire and other perils now hereafter from time to time embraced by or defined in the commercial building form of insurance coverage applicable to a similar Strata Lot and any insurable improvements owned by the Strata Corporation and effected in the Province of British

Columbia by prudent owners from time to time during the Term including, without restricting the generality of the foregoing, the hazards of lightning, earthquake, explosion, wind storm, cyclone, tornado, hail, flood, sea level rise, riot, civil commotion, malicious damage, aircraft, smoke and vehicle damage to the extent that insurance against such risk or perils, or any of them, may be obtained on a commercially-reasonable basis in an amount equal to the full replacement value thereof.

8.2 Pressure Vessel Insurance

At all times during the Term, if the Buildings contain any boilers or pressure vessels, the Strata Corporation shall, at no expense to the Lessor, maintain or cause to be maintained in respect of the Building pressure vessel insurance with one or more companies entitled to do insurance business in the Province of British Columbia protecting the Lessor, the Strata Corporation and the Lessee during the Term in respect of any boilers and such other pressure vessels located and operated on the Lands as the Strata Corporation may from time to time deem it necessary to insure in amounts to be designated by the Strata Corporation and approved by the Lessor, such approval not to be unreasonably withheld. Such insurance shall cover loss or damage caused by rupture or steam pipes.

8.3 Deductible Amount

Any of the policies of insurance referred to in Section 8.1 or 8.2 hereof may, with the approval of the Lessor, which approval shall not be unreasonably withheld, provide that the amount payable in the event of any loss shall be reduced by a deductible amount, such amount to be designated by the Strata Corporation and approved by the Lessor, such approval not to be unreasonably withheld, and the Strata Corporation shall be a co-insurer to the extent of the amount so deducted from the insurance proceeds paid in the event of any loss, and said amount shall for the purpose of Section 8.7 hereof, be included as part of the proceeds of insurance payable and paid.

8.4 Co-Insurance Clauses

If any of the policies of insurance referred to in Sections 8.1, 8.2, and 8.3 hereof shall contain any co-insurance clauses, the Strata Corporation shall maintain at all times a sufficient amount of insurance to meet the requirements of such co-insurance clause so as to prevent the Lessor, the Lessee or the Strata Corporation from becoming a co-insurer under the terms of such policy or policies and to permit full recovery by the Lessee in the event of loss.

8.5 Identity of Insured

Any and all policies of insurance referred to in Sections 8.1, 8.2, and 8.3 hereof shall be written in the name of the Lessor and the Strata Corporation as the insureds. Each policy of insurance referred to in Sections 8.1, 8.2, and 8.3 hereof shall contain a provision or shall bear an endorsement that the insurer will not cancel such policy without first giving the Lessor at least 30 days' notice in writing of its intention to cancel.

8.6 Release of the Indemnified Parties from Liability for Insured Loss or Damage

The Strata Corporation and the Lessee hereby release the Indemnified Parties from any and all liability for loss or damage caused by any of the perils against which the Strata Corporation shall have insured, or under the terms of this Lease is obligated to insure, and the Strata Corporation and the Lessee hereby covenant jointly and severally to defend, indemnify and save harmless the Indemnified Parties from and against all manner of actions, causes of action, suits, judgments, damages, loss, costs, expenses

(including without limitation, legal expenses on a solicitor and own client basis), claims and demands of any nature whatsoever relating to such insured loss or damage.

8.7 Payment of Loss under the Insurance Policies Referred to in Section 6.5, 8.1, and 8.2 and as it concerns insurance on the Buildings, Section 8.12

- (a) Subject to Section 8.7(b) the proceeds of insurance payable under any or all of the policies of insurance referred to in Sections 6.5, 8.1, 8.2, or as it concerns insurance on the Buildings, Section 8.12, shall, notwithstanding the terms of the policy of policies, be paid to the order of the insurance trustee designated by the bylaws of the Strata Corporation (if any), otherwise it shall be paid to the order of the Strata Corporation on behalf of the Lessor, the Lessee, the Strata Corporation and the Mortgagee, if any.
- (b) Subject to Article 28 the Strata Corporation shall use such insurance proceeds for the restoration, reconstruction or replacement of the loss or damage in respect of which such insurance proceeds are payable hereunder against certificates of the Architect engaged by the Strata Corporation or such other person as the Lessor and the Strata Corporation may agree upon who is in charge of such restoration, reconstruction or replacement. Should the Strata Corporation fail to effect the restoration, reconstruction or replacement of the loss or damage in respect of which the insurance proceeds are payable, without unreasonable delay, the Lessor shall be entitled to effect such restoration, reconstruction or replacement and the Strata Corporation shall pay or cause the insurance trustee to pay to the Lessor such insurance proceeds in the same manner as the insurance trustee would have done had the Strata Corporation effected such restoration, reconstruction or replacement.

8.8 Workers' Compensation Coverage

At all times during the Term, the Strata Corporation shall at its own expense procure and carry or cause to be procured and carried and paid for full worker's compensation coverage in respect of all workmen, employees, servants and others engaged in or upon any work on the Lands, the non-payment of which would create a lien on the Strata Lot, the Buildings, or any part thereof.

The Strata Corporation shall immediately notify the Lessor of any dispute involving third parties which may arise in connection with obtaining and maintaining workers' compensation coverage required hereby if such dispute results in the requisite coverage not being in place, and the Strata Corporation shall take all reasonable steps to ensure the resolution of any such dispute forthwith. At all times during the Term, the Lessee and the Strata Corporation shall jointly and severally defend, indemnify and save harmless the Indemnified Parties from and against all damages, costs, expenses (including without limitation, legal expenses on a solicitor and own client basis), claims, suits, judgments and demands which the Indemnified Parties may incur or suffer as a result of any default by the Strata Corporation of its obligation under this Section 8.8 to ensure the said full workers' compensation coverage is maintained. The Strata Corporation shall further ensure that no amount of the said workers' compensation coverage is left unpaid so as to create a lien on the Strata Lot, the Buildings or any part thereof. If the workers' compensation coverage required by this Section 8.8 is not in place within 60 days following the date of the notice to the Lessor hereinbefore mentioned, the Lessor shall be entitled to have recourse to the remedies of the Lessor specified in this Lease or at law or equity.

8.9 Comprehensive General Liability Insurance

At all times during the Term, the Strata Corporation shall at no expense to the Lessor, maintain with one or more companies licenced to do business within the Province of British Columbia (and acceptable to the Lessor, acting reasonably), comprehensive general liability insurance against claims for personal injury, death or property damage or loss arising out of the Lessee's use and occupation of the Lands and Buildings and any insurable improvements owned by the Strata Corporation, indemnifying and protecting specific Indemnified Parties identified by the Lessor, the Lessee, the Strata Corporation and their respective directors, officers, council members, employees, agents, successors and assigns in the sum of \$5,000,000.00 or such other limit which is specified from time to time by the Lessor acting reasonably.

8.10 Payment of Insurance Premiums

The Strata Corporation shall pay all the premiums under the policies of insurance referred to in this Article 8 as they become due and payable whether such policies are obtained and maintained by the Strata Corporation under Section 8.1, 8.2 or 8.9 or by the Lessor under Section 8.12 and in default or payment by the Strata Corporation, the Lessor may pay the same and the Strata Corporation shall reimburse the Lessor for the amount so paid by the Lessor within 30 days after receipt on an invoice therefor from the Lessor and in default of payment thereof by the Strata Corporation, the Lessee's share of the amount so paid by the Lessor (which share shall be determined as hereinafter set forth) may be recovered by the Lessor as Additional Rent with all rights of distress and otherwise as reserved to the Lessor in respect of and as Rent in arrears. In apportioning the cost of such insurance, such cost shall be borne by the Lessee in the proportion that the Unit Entitlement of the Lessee's Strata Lot bears to the aggregate Unit Entitlement of all the Strata Lots from time to time. The Lessor shall submit to the Lessee annually a statement of the amount or amounts payable by the Lessee under Section 8.12 the cost of such insurance for the next ensuing year and upon receipt of payment thereof shall apply the same on account of the premiums of such insurance with the loss, if any, thereunder payable to the Lessor, the Lessee, the Strata Corporation and any Mortgagee, as their interest may appear.

8.11 Copies of Insurance Policies

If requested by the Lessor, and on an annual basis without request, the Strata Corporation shall forthwith from time to time deliver or cause to be delivered to the Lessor certificates of insurance confirming the renewal of all policies of insurance each year during the Term referred to in this Article 8 and obtained and maintained by the Strata Corporation hereunder, accompanied by evidence satisfactory to the Lessor that the premiums thereon have been or will be paid.

8.12 Insurance May be Maintained by Lessor

The Lessee agrees that should the Strata Corporation at any time during the Term fail to insure or keep insured the Buildings against loss or damage by fire and other perils as required under Section 8.1, or fail to maintain insurance against claims for personal injury, death or property damage or loss as required under Section 8.9, then in any of such events, the Lessor, although not obligated to do so, may obtain and maintain such insurance in such amount or amounts with such deductible amounts and for such period or periods of time as the Lessor deems advisable; and the Strata Corporation and the Lessee shall pay to the Lessor as Additional Rent upon the Lessor obtaining any of such insurance and thereafter annually during the Terms within 30 days after receipt of any invoice from the Lessor such amounts, at the rates charged by the insurance companies with whom the Lessor has placed such insurance. In the event the Lessor pays for or obtains and maintains any insurance under Section 8.12, the Lessor shall

submit to the Lessee annually, a statement of the amount or amounts payable by the Lessee and the Strata Corporation under this Section 8.12 as the cost of such insurance for the next ensuing year and upon receipt of payment therefor shall apply the same on account of the premiums of such insurance with the loss, if any, thereunder payable as set out in Section 8.7(b) and Section 8.10 is applicable to the payment of all premiums paid by the Lessor under this Section 8.12.

ARTICLE 9 REPAIRS AND MAINTENANCE

9.1 Lessor not Obligated to Repair

The Lessor shall not be obligated to furnish any services or facilities or to make repairs or alterations in or to the Lands, the Strata Lot, the Common Property or the Common Facilities, the Lessee and the Strata Corporation hereby assuming the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Strata Lot, the Common Property and the Common Facilities.

9.2 Repairs

- (a) The Lessee at the Lessee's cost and expense shall during the Term, put and keep the Strata Lot including, without limitation, windows and doors and areas allocate to its exclusive use, in good order and condition or shall cause to be put and kept in good order and condition (reasonable wear and tear excepted so long as the reasonable wear and tear does not unreasonably affect the exterior appearance of the Buildings or the integrity of any foundation or structure of the Building).
- (b) The Strata Corporation, at no cost to the Lessor, shall during the Term maintain and repair the exterior of the Buildings (excluding windows, doors, balconies and patio included in a Strata Lot) including without limitation, the decorating and exterior cladding of the whole of the exterior of the Buildings and shall maintain and repair (including, without limitation, renewal where reasonably necessary) pipes, wires, cables, chutes and ducts and all other works, services and infrastructure on the Lands for the time being existing in the Strata Lot and capable of being used in connection with the enjoyment of more than one Strata Lot or Common Property and shall maintain all common areas both internal and external, including, without limitation, lawns, gardens, parking and storage areas, public halls and lobbies and shall keep in a state of good and workable condition and repair and property maintain the fixtures and fittings including, without limitation, all elevators and recreational facilities, and other apparatus and equipment used in connection with the Common Property, Common Facilities or other assets of the Strata Corporation (reasonable wear and tear excepted so long as the reasonable wear and tear does not unreasonably affect the exterior appearance of the Buildings or the integrity of any foundation or structure of the Buildings).
- (c) The Lessee and the Strata Corporation shall in the same manner and to the same extent as prudent owners make such repairs promptly so that the Buildings and all appurtenances and equipment and fixtures thereto as aforesaid shall be fully usable for all of the purposes for which the same were erected and constructed and such repairs shall be in all respects to a standard at least substantially equal in quality of material and workmanship to the original work and material in the Buildings and shall meet the

requirements of municipal, provincial, federal, regional, school and other government authorities.

- (d) The Strata Corporation and the Lessee shall not commit or suffer waste or injury to the Lands, the Strata Lot or the Buildings or any part thereof (reasonable wear and tear excepted so long as the reasonable wear and tear does not unreasonably affect the exterior appearance of the Buildings or the integrity of any foundation or structure of the Buildings) and shall not use or occupy or permit to be used or occupied the Lands, the Strata Lot or the Buildings or any part thereof for any illegal or unlawful purpose or in any manner which will result in the cancellation or any insurance, or in the refusal of any insurers generally to issue any insurance as requested. The Lessee and the Strata Corporation shall not injure or disfigure the Lands, the Strata Lot or the Buildings or permit the same to be injured or disfigured in any way; and the expiration or other termination of the Lease, the Lessee shall, except as otherwise expressly provided herein, surrender and deliver up the Lands, the Strata Lots and the Buildings, and the aforesaid fixtures, appurtenances and equipment thereof, or any replacements thereof or substitution therefor, in good and workable condition (reasonable wear and tear excepted so long as the reasonable wear and tear does not unreasonably affect the exterior appearance of the Buildings or the integrity of any foundation or structure of the Buildings). The Lessee accepts the Strata Lot "as is" knowing the condition thereof, and agreeing that the Lessor has made no representation, warranty or agreement with respect thereto.

For greater certainty, the Lessor acknowledges that the Lessee shall not be obligated to repair or replace any Buildings or related fixtures or equipment after the expiry of the Term to a standard which will allow the Buildings to continue to be occupied and operated for residential purposes. The Lessee acknowledges and agrees that the foregoing acknowledgement by the Lessor is subject to and in no way diminishes the Lessee's obligations to repair and maintain the Strata Lot and the Buildings, and the appurtenances and equipment thereof, during the continuation of the Term in accordance with this Section 9.2.

9.3 Repairs may be made by Lessor

- (a) If the Lessee is in breach of the provisions of Section 9.2(a), the Lessor through its agents, servants, contractors and sub-contractors although not obligated to do so, may enter upon the Common Property and those parts of the Strata Lot required for the purpose of making the necessary repairs required to remedy the breach or may require the Strata Corporation to make such repairs as the Lessor may require to remedy the breach.
- (b) If the Strata Corporation is in breach of the provisions of Section 9.2(b) or has failed to cure a breach of a Lessee when required to do so by the Lessor under Section 9.2(a), the Lessor through its agents, servants, contractors and sub-contractors although not obligated to do so, may enter upon the Common Property and those parts of any Strata Lot required for the purpose of making the necessary repairs to remedy the breach.
- (c) The Lessor covenants and agrees with Lessee and the Strata Corporation to make such repairs only after giving the Lessee or the Strata Corporation, as the case may be, 60 days' written notice of its intention so to do, except in the case of an emergency in

which event no notice shall be required. Any amount paid by the Lessor in making such repairs together with all costs and expenses of the Lessor shall be reimbursed to the Lessor, in the case of repairs necessitated by a breach of Section 9.2(a) by the Lessee and in the case of a breach by the Strata Corporation of the provisions of Section 9.2(b) by the Strata Corporation on demand together with:

- (i) interest at the rate of 6% per annum above the Prime Rate from the date incurred until paid; and
- (ii) an administrative charge in an amount fifteen percent (15%) of the amount,

and may be recovered by the Lessor in the case of repairs necessitated by a breach of Section 9.2(a) from the Lessee as Additional Rent and in the case of breach of the provisions of Section 9.2(b) if not reimbursed by the Strata Corporation (which share shall be determined as hereinafter set forth) as Additional Rent. In apportioning any amount to which the Lessor is entitled to reimbursement under this Section 9.3(c) such amount shall be borne by the Lessee in the proportion that the Unit Entitlement of the Lessee's Strata Lot bears to the aggregate Unit Entitlement of all of the Strata Lot from time to time.

9.4 Lessee Not Relieved of Obligations to Repair

Notwithstanding that the Strata Corporation assumes any of the obligations of the Lessee referred to in this Article 9 by reason of any statutory requirement or with the consent of the Lessor, the Lessee shall nevertheless remain bound to the Lessor for the fulfilment of all of its obligations under this Article 9.

ARTICLE 10 CHANGES, ALTERATIONS AND SUBSTITUTIONS

10.1 Alterations

The Lessee or the Strata Corporation shall not make or permit to be made any changes, alterations, replacements, substitutions or additions affecting:

- (a) the structure of the Buildings, the major electrical and/or mechanical systems contained therein when the cost thereof is reasonably expected to exceed \$50,000.00; or
- (b) the exterior decoration, design or appearance of the Buildings or the Lands, when the cost thereof is reasonably expected to exceed \$50,000.00,

(such amounts shall be adjusted by the amount of any increase in the Customer Price Index (All items) for North Vancouver, B.C. as published by Statistic Canada, or any comparable index which might replace it at any time, from the month of the Commencement Date to the end of the month immediately preceding the month in which the costs are going to be incurred), without the written approval of the Lessor thereto, which approval the Lessor agrees not to unreasonably withhold. No changes, alterations, replacements, substitutions or additions shall be undertaken until the Lessee shall have submitted or caused to be submitted to the Lessor drawings, elevations (where applicable), specifications (including, without limitation, the materials to be used), locations (where applicable) and exterior decoration and design of the proposed changes, alterations, replacements, substitutions or additions and until the same have been approved in writing by the Lessor, which approval the Lessor agrees not to unreasonably

withhold. The Lessee and the Strata Corporation covenant and agree with the Lessor that, subject to Article 11, all changes, alterations, replacements, substitutions and additions undertaken by or for the Lessee or the Strata Corporation once begun shall be prosecuted with due diligence to completion. All such changes, alterations and additions shall meet the requirements of the Land Use Requirements and any other government authorities having jurisdictions, including all fees and charges, and the Lessee or Strata Corporation, as applicable, shall also pay the Lessor an administrative charge of \$2,500.00 (which charge may be increased by the Lessor, acting reasonably, during the Term).

ARTICLE 11 UNAVOIDABLE DELAYS

11.1 If, by reason of the occurrence of any event of Unavoidable Delay, the Lessee or the Strata Corporation is, in good faith and without default or neglect on its part, prevented or delayed in any repair of the Buildings or any part or parts of them which under the terms of this Lease the Lessee or the Strata Corporation is required to do by a specified date or within a specified time or if not specified within a reasonable time, the date or period of time within which the work was to have been completed shall be extended by the Lessor by a reasonable period of time at least equal to that of such delay or prevention caused by such event of Unavoidable Delay and the Lessee or the Strata Corporation shall not be deemed to be in default if it performs and completes the work in the manner required by the terms of this Lease within such extended period of time or within such further extended period of time as may be agreed upon from time to time between the Lessor and the Lessee and/or the Strata Corporation, provided that the Lessee or the Strata Corporation delivers notice in writing to the Lessor detailing the date of the commencement and nature of the Unavoidable Delay (the "**Delay Notice**") by no later than fourteen (14) days after the commencement of the Unavoidable Delay. If the Lessor and the Lessee or the Strata Corporation cannot agree as to whether or not there is an event of Unavoidable Delay within the meaning of this Section or if they cannot agree as to the length of such Unavoidable Delay, then such matter will be determined in accordance with Article 21. The Lessee and the Strata Corporation shall act diligently and take all commercially reasonable steps of a prudent owner to remove the cause or causes of any Unavoidable Delay in the Commencement of Construction and the Substantial Completion. Within 48 hours of the time the Unavoidable Delay is remedied or discontinued, the Lessee or Strata Corporation must give notice in writing to the Lessor of such remedy or discontinuance, and that the Lessee or Strata Corporation has resumed, or is then able to resume, the performance of its suspended covenants and obligations hereunder.

ARTICLE 12 BUILDERS' LIENS

12.1 Improvements by Lessee

The Lessee shall, throughout the Term as its own cost and expense, cause any and all builders' liens and other liens for labour, services or materials alleged to have been furnished with respect to the Strata Lot, which may be registered against the Strata Lot, to be paid, satisfied, released (including, without limitation, the release of all such liens from the interest of the Lessor in the Strata Lot) or vacated within 42 days after the earlier of the Lessee becoming aware of any such lien and the date the Lessor delivers to the Lessee and the Strata Corporation written notice by registered mail of any claim for any such lien; provide however, that in the event of a *bona fide* dispute by the Lessee of the validity or correctness of any claim for any such lien, the Lessee shall not be bound by the foregoing, but shall be entitled to defend against the same in any proceedings brought in respect thereof after the first paying into Court the

amount claimed or sufficient security thereof, and such costs as the Court may direct, and registering all such documents as may be necessary to cancel such lien, or providing such other security in respect of such claim as the Lessor may in writing approve, such approval not to be unreasonably withheld.

The Lessee shall give notice to its contractors, subcontractors, materialmen, and workmen that services or materials are provided to the Lessee at its request and for its sole benefit and that the Lessor has not requested the improvements and will not be responsible for them.

12.2 Improvements by Strata Corporation

The Strata Corporation shall, throughout the Term at its own cost and expense, cause any and all builder's liens and other liens for labour, services or materials alleged to have been furnished with respect to the Common Facilities, Common Property, the Strata Lot, which may be registered against the Common Facilities, Common Property, the Strata Lot and are not the responsibility of the Lessee under Article 12, to be paid, satisfied, released (including, without limitation, the release of all such liens from the interest of the Lessor in the Strata Lot, Common Facilities and Common Property) or vacated within 42 days after the Lessor shall send to the Strata Corporation written notice by registered mail of any claim for any such lien, PROVIDED HOWEVER, that in the event of a *bona fide* dispute by the Strata Corporation of the validity or correctness of any claim for any such lien, the Strata Corporation shall not be bound by the foregoing but shall be entitled to defend against the same in any proceeding brought in respect thereof after first paying into Court the amount claimed or sufficient security thereof and such costs as the Court may direct and registering all such documents as may be necessary to cancel such lien, or providing such other security in respect of such claim as the Lessor may in writing approve.

The Strata Corporation shall give notice to its contractors, subcontractors, materialmen, and workmen that services or materials are provided to the Strata Corporation at its request and for its sole benefit and that the Lessor has not requested the improvements and will not be responsible for them.

12.3 Lessor Has Filed Notice of Interest

It is agreed that the Lessor shall not be responsible for claims of builders liens filed by persons claiming through either the Strata Corporation or the Lessee, or persons for whom either the Strata Corporation or the Lessee is in law responsible. The Lessee acknowledges and agrees that the improvements to be made to the Lands will be made at either the Strata Corporation's or the Lessee's request, solely for the benefit of either the Strata Corporation or the Lessee and those for whom either the Strata Corporation or the Lessee is in law responsible. The Lessor has filed a notice of interest in the LTO under Section 3(2) of the *Builders Lien Act* stating that the Lessor is giving notice that it will not be responsible for any improvements done to the Lands, the Strata Lots, Buildings or other improvements thereon, unless the improvements are undertaken at the express request of the Lessor.

ARTICLE 13 INSPECTION AND EXHIBITION BY LESSOR

13.1 Inspection by Lessor

The Lessee and the Strata Corporation agree with the Lessor that it shall be lawful for a representative of the Lessor, upon the provision of one business day's notice, at all reasonable times during the Term (and upon delivery of reasonable prior written notice to the Lessee and the Strata Corporation and subject to the observance by the Lessor of the Lessee's and the Strata Corporation's reasonable requirements

regarding Building resident security and privacy) to enter the Strata Lot, the Common Property, the Common Facilities and the Buildings, or any of them and to examine the condition thereof; and further, that all wants of reparation as required by Section 9.2 which upon such views shall be found, and for the amendment of which notice shall be delivered or given by the Lessor to the Lessee or the Strata Corporation, the Lessee shall within 60 days after every such notice or such longer period as provided in Section 20.2, well and sufficiently repair and make good accordingly.

13.2 Exhibition by Lessor

During the final 12 months of the Term, the Lessor shall be entitled to display upon the Lands and/or Common Property any signs advertising the Strata Lot, Lands, or Buildings as being available for purchase or lease or such other disposition as determined by the Lessor, provided such signs are displayed in such a manner as to not interfere unreasonably with the Lessee's use and enjoyment of the Strata Lot, the Common Property and the Common Facilities.

ARTICLE 14 OBSERVANCE OF REGULATIONS

14.1 Regulations

The Lessee and the Strata Corporation covenant with the Lessor that throughout the Term the Lessee and the Strata Corporation will comply with all Applicable Laws, which relate to the construction and erection of the Buildings, to the equipment and maintenance of the Buildings and the Strata Lots, to the operation, occupation and use of the Buildings, the Strata Lots and the Lands, and to the making of any repairs, replacements, alterations, additions, changes, substitutions or improvements of or to the Buildings, the Strata Lots, the Lands or any part thereof. The Lessee and the Strata Corporation covenant to comply with all police, fire and sanitary regulations imposed by any municipal, regional, provincial, federal or other governmental authorities and to observe and obey all municipal, regional, provincial, federal and other governmental regulations and other legal requirements governing the use and occupation of the Strata Lot or the Buildings.

14.2 Environmental

Without derogating from the Lessee's and the Strata Corporation's obligation under Section 14.1, the Lessee and the Strata Corporation covenant and agree with the Lessor to:

- (a) develop and use the Buildings, the Strata Lots and the Lands only in compliance with all Environmental Laws;
- (b) at the reasonable request of the Lessor, permit the Lessor to investigate the Buildings, the Strata Lots and the Lands, any goods thereon, and the Lessee's records which relate to Environmental Laws and this Lease at any time and from time to time to verify such compliance with Environmental Laws and this Lease;
- (c) at the reasonable request of the Lessor and provided that the Lessor, acting reasonably, has reason to believe that the Lands and the Buildings are not in compliance with Environmental Laws, obtain from time to time at the Lessee's and the Strata Corporation's cost a report from an independent consultant designated or approved by

the Lessor verifying compliance with Environmental Laws and this Lease or the extent of any non-compliance therewith;

- (d) except in compliance with all Environmental Laws, not store, manufacture, dispose, treat, generate, use, transport, remediate, or Release Environmental Contaminants on or from the Buildings, the Strata Lots or the Lands without notifying the Lessor in writing and receiving prior written consent from the Lessor with respect thereto, which consent may be unreasonably or arbitrarily withheld;
- (e) if required by any Environmental Laws promptly remove any Environmental Contaminants from the Buildings, the Strata Lots or the Lands in a manner which conforms to Environmental Laws governing their removal; and
- (f) notify the Lessor in writing:
 - (i) within seven (7) days of discovery thereof, of any enforcement, clean up, removal, litigation, or other governmental, regulatory, judicial, or administrative action instituted or threatened in writing against the Lessee, the Strata Corporation, the Buildings, the Strata Lots or the Lands pursuant to any Environmental Laws;
 - (ii) within seven (7) days of discovery thereof, of all claims, actions, orders, or investigations instituted or threatened in writing by any third party against the Lessee, the Strata Corporation, the Buildings, the Strata Lots or the Lands relating to damage, contribution, cost recovery, compensation, loss, or injuries resulting from any Environmental Contaminants or any breach of the Environmental Laws; and
 - (iii) within seven (7) days of discovery thereof, of the discovery of any Environmental Contaminants or any occurrence or condition on the Buildings, the Strata Lots or the Lands or any real property adjoining or in the vicinity of the Lands which could subject the Lessee, the Strata Corporation, the Buildings, the Strata Lots or the Lands to any fines, penalties, orders, or proceedings under any Environmental Laws.

14.3 Lessor May Make Enquiries

The Lessee and the Strata Corporation hereby authorize the Lessor to make enquiries from time to time of any governmental authority with respect to the compliance by the Lessee and the Strata Corporation with Environmental Laws in connection with the Lands, the Strata Lots or the Buildings, and the Lessee and the Strata Corporation agree that the Lessee and the Strata Corporation will from time to time provide to the Lessor such written authorization as the Lessor may reasonably require in order to facilitate the obtaining of such information.

14.4 Environmental Indemnity and Release

The Lessee and the Strata Corporation hereby release and shall indemnify and save harmless the Lessor and the Indemnified Parties from and against any liabilities, damages, losses, interest, penalties, fines, monetary sanctions, costs, expenses or claims (including without limitation reasonable costs of legal counsel and other professional advisors, consultants and experts in the defense, investigation, and

resolution of such claim and costs of any remedial or other management action related thereto) (collectively, the “**Claims**”) that occur or arise as a result of:

- (a) any breach by the Lessee of any provisions of this Article 14,
- (b) the Lessee, the Strata Corporation or any of their respective employees, officers, trustees, directors, agents, invitees, contractors, and others for whom they are in law responsible causing or having caused during the Term any Release of any Environmental Contaminants at, in, on, under or about the Buildings, the Strata Lots or the Lands in breach of Environmental Laws,
- (c) any claims brought by any third party, including but not limited to any governmental authority, and any orders made by any governmental authority with respect to any Environmental Contaminants on or at the Buildings, the Strata Lots or the Lands; and
- (d) any claims brought by any third party, including but not limited to any governmental authority, and any orders made by any governmental authority with respect to any Environmental Contaminants migrating from the Buildings, the Strata Lots or the Lands,

but, for greater certainty, not including any Claims that arise from any breach by the Lessor of the Lessor’s representations and warranties contained in Section 2.1(d) of the Offer to Lease between the Lessor and 2195 Gordon Avenue Limited Partnership dated for reference ●, 2022.

The provisions of this Section 14.4 shall survive the expiration or earlier termination of this Lease.

ARTICLE 15 RIGHTS OF LESSOR AND LESSEE

15.1 All rights and benefits and all obligations of the Lessor and the Lessee under this Lease shall be rights, benefits and obligations of the Lessor and the Lessee respectively in their capacities as Lessor and Lessee respectively under this Lease, and references in this lease to the “Lessor” shall be to the District in its capacity and role as landlord under this Lease and as registered owner of the Lands and the Strata Lots and not the District in its capacity as the owner of all District lands with regulatory powers with respect thereto (except where the District, in the latter capacity, is referred to in this Lease as the “the District”).

ARTICLE 16 INDEMNITY

16.1 Indemnification of the Indemnified Parties by the Strata Corporation and the Lessee

Subject to the provisions of Section 16.2, the Strata Corporation and the Lessee jointly and severally covenant and agree to defend, indemnify and save harmless the Lessor and Indemnified Parties from and against all damages, losses, actions, causes of actions, suits, judgments, claims, demands, builder liens, liabilities, expenses (including, without limitation, legal expenses on a solicitor and own client basis), costs, indirect or consequential damages (including, without limitation, loss of profits and loss of use and damage arising out of delays) which may arise or accrue to any person, firm or corporation against the Indemnified Parties or any of their respective contractors and subcontractors which the Indemnified Parties may pay, incur, sustain or be put to arising out of or in any way connected with or that would not

be made or incurred but unremedied breaches or violations by the Lessee of its obligations under this Lease.

Without derogating from the generality of the foregoing, the Strata Corporation and the Lessee jointly and severally agree to defend, indemnify and save harmless the Indemnified Parties in respect of:

- (a) all manner of actions, causes of action, suits, judgments, damages, loss, costs, claims and demands of any nature whatsoever relating to and arising during the Term or any period of over holding out of:
 - (i) bodily injury or death;
 - (ii) property damage, or
 - (iii) other loss or damageresulting from:
 - (i) the conduct of any work;
 - (ii) any act or omission, or
 - (iii) relating to or arising from the occupation or possession of the Lands, the Strata Lots, the Common Property and/or the Common Facilities or any portion thereof,by the Strata Corporation and/or the Lessee or any assignee, subtenant, agent, employee, contractor, subcontractor, invitee or licensee of either the Strata Corporation and/or the Lessee;
- (b) all costs, expenses and liabilities incurred by the Lessor and Indemnified Parties in connection with or arising out of all such claims, including, without limitation, the expenses of any action or legal proceeding pertaining thereto on a solicitor and own client basis;
- (c) the liabilities or obligations incurred or sustained by or imposed upon the Indemnified Parties; and
- (d) any and all manner of actions, causes of action, suits, judgments, administrative proceedings, damages, losses, costs, expenses (including without limitation, legal expenses on a solicitor and own client basis), builder's liens, claims and demands of any nature whatsoever,

arising from any breach, violation or non-performance of any covenant, proviso, condition or agreement contained in this Lease on the part of the Strata Corporation and/or the Lessee to be fulfilled, kept, observed or performed.

16.2 Joint and Several Indemnification Survives Termination of Lease

The obligations of the Strata Corporation and/or the Lessee, as the case may be, to defend, indemnify and save harmless the Lessor and Indemnified Parties under the provisions of this Lease are joint and

several obligations of the Strata Corporation and the Lessee and shall apply and continue notwithstanding the termination of this Lease or breach of this Lease by the Lessor, or negligence on the part of the Indemnified Parties or any of their respective contractors or subcontractors, anything in this Lease to the contrary notwithstanding, except that it is understood and agreed that the liability of the Lessee to defend, indemnify and save harmless the Lessor and Indemnified Parties under the provisions of this Lease shall always be limited to an amount that is equal to the proportion that the Unit Entitlement of the Lessee's Strata Lot, if any, bears to the aggregate Unit Entitlement of all of the Strata Lots, if any, at the time the liabilities or obligations are incurred or sustained by or imposed upon the Indemnified Parties, unless the provisions of the *Strata Property Act* permit otherwise.

ARTICLE 17 SUBLETTING AND ASSIGNING

17.1 Subletting by Lessee – Other Than by Way of Mortgage

- (a) The Lessee may at any time and from time to time during the Term sublease the Strata Lot without the consent of the Lessor if there has been Substantial Completion; PROVIDED HOWEVER that, Basic Rent and Additional Rent have been paid and the Lessee is not then in default in the performance or observance of the other covenants, provisos and agreements required of the Lessee to be performed and observed.
- (b) Notwithstanding any such consent being given by the Lessor under this Section 17.1 and such subleasing being effected, the Lessee shall remain bound to the Lessor for the fulfilment of all of its obligations hereunder.
- (c) At the Lessor's request, a copy of any or all subleases shall be forwarded to the Lessor within 30 days of the conclusion of such transaction together with particulars of registration (if any) in the LTO;

otherwise the Lessor's consent must be first had and obtained, which consent may be unreasonably withheld.

17.2 Assignment of Lessee – Other Than by Way of Mortgage

The Lessee may at any time and from time to time during the Term, assign, transfer or convey the Strata Lot without the consent of the Lessor; PROVIDED HOWEVER that Rent has been paid and the Lessee is not then in default in the performance or observance of the other covenants, provisos and agreements required of the Lessee to be performed and observed; and PROVIDED FURTHER that such assignment, transfer or conveyance by the Lessee of its leasehold interest in the Strata Lot (other than by way of Mortgage) shall be subject to the following conditions:

- (a) the assignment, transfer or conveyance shall be in the form attached hereto as Addenda "A" and "B", which form a part of this Lease, with such additions, deletions or amendments thereto as are appropriate to the premises to be assigned and as are approved by the Lessor and shall be executed by or on behalf of the vendor and purchaser named therein and the Lessor before being deposited in the New Westminster Land Title Office for registration;

- (b) the District or other authority having jurisdiction has first issued a Certificate of Occupancy in respect of the Strata Lot;

otherwise the Lessor's consent must be first had and obtained, which consent may be unreasonably withheld.

ARTICLE 18 MORTGAGE

18.1 Assignment or Subletting by Way of Mortgage

Nothing herein contained shall be construed to prevent or prohibit the assignment or subletting by the Lessee of the Strata Lot by way of Mortgage provided that in the event of a Mortgage and notwithstanding any such assignment or subletting, the Lessee shall be and remain liable for the payment of all Rent and the performance of all the terms, covenants and conditions of this Lease. Subject to the provisions of Sections 18.2 and 18.3, every Mortgage shall be made expressly subject to the rights of the Lessor under the Lease, otherwise assignment or subletting by the Lessee of the Strata Lot by way of Mortgage shall be subject to the consent of the Lessor which consent may be unreasonably withheld.

18.2 Rights of Mortgagee

The Mortgagee under any Mortgage referred to in Section 18.1 may enforce such Mortgage and acquire title to the leasehold estate of the Lessee in any lawful way and, by its representative or by a receiver, as the case may be, take possession of and manage the Strata Lot and upon foreclosure of such mortgage may sell or assign the leasehold estate and the purchaser or assignee of the leasehold estate shall be liable to perform the obligations imposed upon the Lessee by this Lease only so long as such purchaser or assignee has ownership or possession of such leasehold estate.

18.3 Notice to and Remedies of Mortgagee

- (a) No re-entry, termination, acceptance of surrender, disclaimer or forfeiture of this Lease or distress by the Lessor, a receiver, interim-receiver, receiver manager, liquidator, custodian or trustee or order for sale of the Lessee's interest in the Strata Lot or this Lease or re-entry by the Lessor or a judgment against the Strata Corporation arising out of an action brought by the Lessor under Section 20.2 shall be valid against any Mortgagee who has executed and delivered to the Lessor a tripartite agreement under Section 18.4 unless the Lessor shall first have given to the Mortgagee notice of any default entitling the Lessor to re-enter, terminate or forfeit this Lease or to bring an action against the Strata Corporation as aforesaid, specifying the nature of that default and stating the Lessor's intention to take such proceedings and requiring the Mortgagee:
 - (i) to cure the default specified in the notice within a period of 60 days from the date of receipt of that notice by the Mortgagee, or
 - (ii) if the default is other than the failure to pay Rent or any other sums required to be paid by the Lessee by any provisions of this Lease and if the default cannot reasonably be cured within such 60 day period, then to immediately commence to cure the same and to diligently prosecute to conclusion all acts necessary to

cure the default, and the Lessor hereby grants the Mortgagee access to the Strata Lot for that purpose.

- (b) If the default is cured within the period specified, the Mortgagee (or any other entity designated by the Mortgagee by written notice to the Lessor) shall be entitled to become tenant of the Strata Lot in the place and stead of the Lessee for the balance of the Term remaining at the date of the notice of default or contingency, providing that the Mortgagee (or such designated entity) attorns as tenant to the Lessor and undertakes to be bound by and to perform the covenants and agreements of the Lessee under this Lease from the date and for so long as the Mortgagee (or such designated entity) remains tenant and has not assigned the balance of the Term; PROVIDED however that in the event the Mortgagee consists of more than one mortgagee each having a separate charge upon the Lessee's interest in this Lease, and more than one of them wishes to cure the default or contingency specified in the notice aforesaid, then the Lessor hereby agrees to permit curing of the default or contingency specified as aforesaid and the assumption of the balance of the Term as aforesaid by that Mortgagee (or such designated entity) which is willing to cure and assume as aforesaid and whose charge ranks in priority over the charge or charges held by the other Mortgagee or Mortgagees willing to cure and assume as aforesaid.
- (c) In the event the Mortgagee commences foreclosure proceedings against the Lessee, whether or not the Lessee or the Strata Corporation is in default of the performance of its covenants and agreements with the Lessor under this Lease at the time such foreclosure proceedings are commenced, the Lessor shall not make application for an order for the sale of the Lessee's interest in the Strata Lot or this Lease or re-enter after the commencement of foreclosure proceedings on the ground of any default entitling the Lessor to such order or re-entry provided the Mortgagee:
 - (i) shall first have given to the Lessor notice of the foreclosure proceedings;
 - (ii) is actively prosecuting the foreclosure proceedings without undue delay;
 - (iii) cures the default within a period of 60 days from the date of receipt of notice from the Lessor specifying the nature of the default, or if the default is other than the failure to pay Rent or any other sums required to be paid to the Lessor by any provision of this Lease and if such default cannot reasonably be cured within such 60 day period, immediately commences to cure the same and to diligently prosecute to conclusion all acts necessary to cure the default; and
 - (iv) performs and observes all of the Lessee's covenants and agreements under this Lease and without undue delay diligently prosecutes to a conclusion the foreclosure proceedings commenced by the Mortgagees.

In the event the Mortgagee (or another entity designated by the Mortgagee) acquires title to the Lessee's interest in the Strata Lot under the foreclosure proceedings, the Mortgagee shall thereupon become subrogated to the rights of the Lessee under this Lease, provided it (or such designated entity) attorns to the Lessor as tenant and undertakes to the Lessor to be bound by and to perform the covenants and agreements of this Lease for so long as it remains tenant and has not assigned the balance of the

Term. PROVIDED HOWEVER that in the event the Mortgagee consists of more than one Mortgagee and more than one of them commences foreclosure proceedings, the right to cure any default granted by this Section 18.3(c) to a foreclosing Mortgagee shall be deemed granted to them in the order of priority of the charges held by the foreclosing Mortgagee.

- (d) If this Lease shall be subject to a termination, forfeiture or order for sale under Article 19 by reason of the bankruptcy or insolvency of the Lessee and the Mortgagee has filed with the lessor notice of Mortgage in favour of the Mortgagee and specified an address for notice under Article 29, the Lessor shall give to the Mortgagee notice of the bankruptcy or insolvency of the Lessee entitling the Lessor to apply for an order for sale of this Lease and stating the Lessor's intention to take such proceedings and requiring the Mortgagee to cure any other default of the Lessee and the Lessee's other default shall be deemed to have been sufficiently cured if the Mortgagee:
- (i) commences foreclosure proceedings against the Lessee as more particularly set out in Section 18.3(c);
 - (ii) takes possession and control of the Strata Lot, or causes a receiver to be appointed under the terms of the Mortgagee's charge or by a court of competent jurisdiction, who takes possession and control of the Strata Lot, and the Lessor hereby grants the Mortgagee or such receiver access to the Strata Lot for that purpose;
 - (iii) cures every default within a period of 60 days from the date of receipt by the Mortgagee of the notice from the Lessor of the bankruptcy or insolvency of the Lessee, or if such default or defaults are other than the failure to pay Rent or any other sums required to be paid to the Lessor by any provision of this Lease and if such default or defaults cannot reasonably be cured within such 60 day period, immediately commences to cure the same and to diligently prosecute to conclusion all acts necessary to cure the default or defaults, and
 - (iv) (or such designated entity) attorns as tenant to the Lessor and undertakes to the Lessor to be bound by and to perform the covenants and agreements of this Lease for so long as it remains tenant and has not assigned the balance of the Term.

PROVIDED HOWEVER, that in the event the Mortgagee consists of more than one Mortgagee the right to take possession and control, to cure any default and to assume this Lease as aforesaid shall be deemed granted to them in the order of the priority of their respective charges.

- (e) Any sale of the Lessee's interest in the Strata Lot made in accordance with the provisions of this Lease as against the Lessee shall be valid and effectual against the Lessee even though made subject to the rights of any Mortgagee to cure any default of the Lessee and to continue as tenant under the Lease.

- (f) No entry upon the Strata Lot by the Mortgagee under this Section 18.3 for the purposes of curing any default or defaults of the Lessee shall release or impair the continuing obligations of the Lessee.

18.4 Protection of Mortgagee (Tri-Partite Agreements)

The Lessor and the Lessee agree that the obligations of the Lessor under Section 18.3 are subject to the Mortgagee entering into an agreement in the form attached hereto as Addendum "C" (which form of agreement shall be photocopied and completed by the Mortgagee by hand without changes and presented to the Lessor for execution or such other form as may be approved by the Mortgagee and Lessor, each acting in a commercially-reasonable manner, whereby the Mortgagee agrees that, if it (or any other entity designated by the Mortgagee by written notice to the Lessor) acquires title to the Lessee's interest in this Lease, it shall, for so long as it remains tenant and has not assigned the balance of the Term, perform and observe the covenants and agreements required of the Lessee to be performed and observed if not performed or observed by the Lessee, whether or not the Lessor has taken any steps to enforce performance or observance of any of the covenants and agreements in this Lease to be performed or observed by the Lessee.

ARTICLE 19 BANKRUPTCY OF LESSEE

19.1 Events of Bankruptcy or Receivership

The parties hereto agree, subject to the provisions of Section 18.3, 18.4 and 19.2 that:

- (a) If the Lessee shall make a general assignment for the benefit of creditors, or
- (b) If the Lessee shall institute proceedings to be adjudicated bankrupt or insolvent or shall consent to the institution of bankruptcy or insolvency proceedings against the lessee or shall file an application or petition or answer or consent, seeking re-organization or re-adjustment of the indebtedness of the Lessee under the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act* or any law of Canada or any province thereof relating to bankruptcy or insolvency or shall consent to the filing or any such application or petition or shall consent to the appointment of a receiver, interim-receiver, receiver-manager, trustee, liquidator, or custodian, or
- (c) If a receiver, interim-receiver, receiver-manager, trustee, liquidator or custodian of all or substantially all of the property of the Lessee or of the Lessee's leasehold interest in the Strata Lot shall be appointed or applied for by the Lessee or appointed under an instrument or by order of a court, or
- (d) If a judgment, decree or order shall be entered by a court of competent jurisdiction adjudging the Lessee a bankrupt or insolvent or subject to the provisions of the *Bankruptcy and Insolvency Act* or determining that proceedings for re-organization, arrangement, adjustment, composition, liquidation, or any similar relief under the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act* or any law of Canada or any province thereof relating to the bankruptcy or insolvency have been properly instituted otherwise than by the Lessee, provided that such judgment, decree or order is not in good faith contested by the Lessee, or

- (e) If any application or petition or certificate or order is made or granted for the winding up or dissolution of the Lessee voluntarily or otherwise:

the Lessor may, unless the Lessee voluntarily surrenders the Strata Lot to the Lessor, apply to the Supreme Court of British Columbia for an order for sale as provided in Section 209 of the *Strata Property Act*.

19.2 Procedure in the Event of Bankruptcy or Receivership

The parties hereto agree, subject to the provisions of Sections 18.3 and 18.4, that:

- (a) If the Lessee shall make a general assignment for the benefit of creditors, or
- (b) If the Lessee shall institute proceedings to be adjudicated bankrupt or insolvent or shall consent to the institution of bankruptcy or insolvency proceedings against the Lessee or shall file an application or petition or answer or consent, seeking re-organization or re-adjustment of the indebtedness of the Lessee under the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act* or any law of Canada or any province thereof relating to bankruptcy or insolvency or shall consent to the filing or any such application or petition or shall consent to the appointment of a receiver, interim-receiver, receiver-manager, trustee, liquidator, or custodian, or
- (c) If a receiver, interim-receiver, receiver-manager, trustee, liquidator or custodian of all or substantially all of the property of the Lessee or of the Lessee's leasehold interest in the Strata Lot shall be appointed or applied for by the Lessee or appointed under an instrument or by order of a court, or
- (d) If a judgment, decree or order shall be entered by a court of competent jurisdiction adjudging the Lessee a bankrupt or insolvent or subject to the provisions of the *Bankruptcy and Insolvency Act* or determining that proceedings for re-organization, arrangement adjustment, composition, liquidation, dissolution, or winding-up or any similar relief under the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act* or any law of Canada or any province thereof relating to bankruptcy or insolvency have been properly instituted otherwise than by the Lessee, provided that such judgment, decree or order is not in good faith contested by the Lessee, or
- (e) If any application or petition or certificate or order is made or granted for the winding up or dissolution of the Lessee voluntarily or otherwise;

then the receiver, interim-receiver, receiver-manager, liquidator, custodian or trustee shall have the right to disclaim this Lease or to hold and retain the Strata Lot for a period not exceeding six months from the effective date of any such appointment, receiving order, assignment, judgment, decree, order of the commencement of dissolution or winding-up, as the case may be, or until the expiration of the Term, whichever first happens on the same terms and conditions as the Lessee might have held the Strata Lot had no such appointment, receiving order assignment, judgment, decree or order been made or dissolution or winding-up commenced.

If the receiver, interim-receiver, receiver-manager, liquidator, trustee or custodian holds and retains the Strata Lot and the Buildings as aforesaid he shall during the said period either:

- (i) surrender possession at any time and the Term shall thereupon terminate,
- (ii) sell, transfer or otherwise dispose of all the interest of the Lessee in this Lease and the Strata Lot for the remainder of the Term or any part thereof and all the rights of the Lessee hereunder notwithstanding anything to the contrary in Article 17 contained if, after 14 days' written notice of the court application being given to the Lessor, the Supreme Court of British Columbia upon the application of such receiver, interim-receiver, receiver-manager, liquidator, custodian or trustee approves such sale, transfer or disposition, or
- (iii) continue as tenant for the balance of the Term remaining provided that the receiver, interim-receiver, receiver-manager, liquidator, custodian or trustee attorns as tenant to the Lessor and undertakes to be bound by and to perform the covenants and agreements of this Lease on the part of the Lessee to be performed and observed.

19.3 Certain Rights of the Parties

The parties hereto agree that:

- (a) Should the receiver, interim-receiver, receiver-manager, liquidator, custodian or trustee at any time before or after taking possession, disclaim this Lease or surrender possession to the Lessor, his liability and the liability of the estate of the Lessee and of the Lessee for payment of rent is limited to the period of time during which the receiver, interim-receiver, receiver-manager, liquidator, custodian or trustee remains in possession of the Strata Lot for the purpose of the trust estate. If the receiver, receiver-manager, liquidator, custodian or trustee disclaims this Lease or surrenders possession, the Lessor or the Lessor's agents or employees authorized by the Lessor may immediately or at any time thereafter apply to the Supreme Court of British Columbia for an order for sale as provided in Section 209 of the *Strata Property Act* without being liable for any prosecution or damages thereof, and such receiver, interim receiver, receiver-manager, liquidator, custodian or trustee shall execute a surrender or assignment to the Lessor in registrable form;
- (b) Entry into possession of the Strata Lot by the receiver, interim-receiver, receiver-manager, liquidator, custodian or trustee and its occupation by him while required for the purpose of the performance of his duties in his office shall not be deemed to be evidence of an intention on his part to retain the Strata Lot, nor affect his right to disclaim or to surrender possession under the provisions of Section 19.2;
- (c) If after occupation of the Strata Lot, by the receiver, interim-receiver, receiver-manager, liquidator, custodian or trustee elects to retain it and thereafter sells, transfers or otherwise disposes of the lease, the Strata Lot and all interests and rights of the Lessee therein and hereunder to a person approved by the court as provided by Section 19.2, his liability and the liability of the Lessee and his estate for the payment of any Rent, if any, is limited to the period of time during which he remains in possession of the Strata Lot.

19.4 No Abatement of Rent

The receiver, interim-receiver, receiver-manager, liquidator, custodian or trustee shall pay to the Lessor for the period during which the receiver, interim-receiver, receiver-manager, liquidator, custodian or trustee actually occupies the Strata Lot under Section 19.2 hereof any Rent payable by the Lessee to the Lessor under this Lease during any such period of occupancy.

ARTICLE 20 DEFAULT BY LESSEE

20.1 Procedure in the Event of Default by Lessee

Subject to the provisions of Sections 11.1, 18.3 and 21.1, if:

- (a) the Lessee shall default in payment of any Rent required to be paid to the Lessor by any provision of this Lease, and such default shall continue for a period of 30 days after written notice of intention to terminate this Lease by reason of such default shall have been given by the Lessor to the Lessee, or
- (b) the Lessee shall default in performing or observing any of its covenants or obligations under this Lease (other than those referred to in Section 20.1(a)) or the Strata Corporation shall default in performing or observing any of its covenants or obligations under this Lease (other than those referred to in Section 20.3) and the Lessor shall have given to the Lessee notice of such default and at the expiration of 60 days after the giving of such notice the default shall continue to exist or, in the case of a default which cannot with due diligence be cured within the period of 60 days aforesaid, the Lessee fails to proceed promptly after the giving of such notice to cure such default;

the Lessor may unless the Lessee voluntarily surrenders the Strata Lot to the Lessor, apply to the Supreme Court of British Columbia for an order for sale as provided in Section 209 of the *Strata Property Act*.

20.2 Right to Cure in the Event of Default by the Lessee

The Lessor and the Lessee agree that if the Lessee defaults in performing or observing any of its covenants or obligations under this Lease (other than those referred to in Section 20.1(a)) and the Lessor has given to the Lessee notice of such default and at the expiration of 60 days after the giving of such notice the default continues to exist or, in the case of a default which cannot with due diligence be cured within the period of 60 days aforesaid, the Lessee fails to proceed promptly after the giving of such notice to cure such default, the Lessor shall have the right and licence, at any time, and from time to time, without any liability for trespass or otherwise, to enter upon the Common Property and the Strata Lot to cure such default, and any costs so incurred by the Lessor in curing such default plus an additional amount equal to fifteen percent (15%) of any such costs incurred shall be payable to the Lessor under this Lease as Additional Rent.

20.3 Procedure in Event of default by Strata Corporation

If the Strata Corporation shall default in performing or observing any of its covenants or obligations under this Lease as the same relate to the Common Property or the Common Facilities (other than those

referred to in Sections 9.2(a) and 9.2(b)) and the Lessor shall have given to the Lessee and the Strata Corporation and to each Mortgagee notice specifying such default and at the expiration of 60 days after the giving of such notice the default shall continue to exist or, in the case of a default which cannot with due diligence be cured within the period of 60 days aforesaid, the Strata Corporation fails to proceed promptly after the giving of such notice to cure such default, the Lessor:

- (a) shall have the right and licence, at any time, and from time to time, without any liability for trespass or otherwise, to enter upon the Common Property and those parts any Strata Lot required to cure the specified default, although not obligated to do so, and any amount paid by the Lessor in curing such default, together with all costs and expenses of the Lessor, shall be reimbursed to the Lessor by the Strata Corporation, the Lessee's share of the amount so paid and the said costs and expenses of the Lessor plus an additional amount equal to fifteen percent (15%) of any such costs incurred (which share shall be determined as hereafter set forth) may be recovered by the Lessor from the Lessees as Additional Rent. In apportioning any amount to which the Lessor is entitled to reimbursement by the Strata Corporation, such amount shall be borne by the Lessee in the proportion that the Unit Entitlement of the Lessee's Strata Lot bears to the aggregate Unit Entitlement of all of the Strata Lots from time to time, or
- (b) may bring an action against the Strata Corporation to remedy the specified default or recover the amount so paid by the Lessor in curing the default and all costs and expenses of the Lessor.

20.4 Remedies of Lessor are Cumulative

The remedies of the Lessor specified in this Lease are cumulative and are in addition to any remedies of the Lessor at law or equity. No remedy shall be deemed to be exclusive, and the Lessor may from time to time have recourse to one or more or all of the available remedies specified herein or at law or equity. In addition to any other remedies provided in this Lease, the Lessor shall be entitled to restrain by injunction any violation or attempted or threatened violation by the Lessee or any of the covenants or agreements hereof.

20.5 Waiver by Lessor

The failure of the Lessor to insist upon the strict performance of any covenant or agreement of this Lease shall not waive such covenant or agreement, and the waiver by the Lessor of any breach of any covenant or agreement of this Lease shall not waive such covenant or agreement in respect of any other breach. The receipt and acceptance by the Lessor of rent or other monies due hereunder with knowledge of any breach of any covenant or agreement by the Lessee shall not waive such breach. No waiver by the Lessor shall be effective unless made in writing.

ARTICLE 21 DISPUTE RESOLUTION

21.1 Dispute Resolution

If a dispute arises between the parties relating to this Lease, or arising out of this Lease, the parties agree to use the following procedure as a condition precedent to any party pursuing other available remedies:

- (a) The parties shall attempt in good faith to resolve the dispute promptly by negotiation. However, at any time, a party may give the other party written notice (the “**Initial Notice**”) of any dispute not so resolved. Within 30 days after delivery of an Initial Notice, the recipient party shall deliver to the other a written response. Both the Initial Notice and the response must include a statement of that party’s position, a summary of arguments supporting that position, and the name and contact particulars of the person who will represent that party and of any other person who will accompany the representative. Within 60 days after delivery of the Initial Notice, the representatives of the parties (and any persons intended to accompany same as specified in the Initial Notice or response, as applicable) shall meet at mutually acceptable times and places, as often as they reasonably deem necessary, to attempt to resolve the dispute.
- (b) All negotiations pursuant to Section 21.1(a) are confidential and are to be treated as compromise and settlement negotiations for purposes of applicable rules of evidence, subject to the provision of the *Freedom of Information and Protection of Privacy Act*.
- (c) If the negotiations pursuant to Section 21.1(a) are not successful, either party may notify the other by written notice (the “**Dispute Notice**”) of the existence of a dispute and a desire to resolve the dispute by mediation. If the other party agrees to submit the dispute to mediation, the parties will bear equally the costs of mediation. The parties will jointly appoint a mutually acceptable mediator, seeking assistance from the roster organization defined in the Notice to Mediate (General) Regulation (as amended or replaced), if they have been unable to agree upon such appointment within 30 days following delivery of the Dispute Notice. The parties agree to participate in good faith in the mediation and negotiations related thereto for a period of 30 days following appointment of the mediator, or for such longer period as the parties may agree. If the parties are not successful in resolving the dispute through mediation, or if the mediation has not commenced within 90 days following the delivery of the Dispute Notice, then either party may initiate litigation proceedings upon 14 days written notice to the other parties, provided, however, that the parties may agree to proceed by arbitration instead of litigation.
- (d) Notwithstanding any other provision of this Lease, a party may seek injunctive relief (whether as a temporary restraining order, preliminary injunction or otherwise) or specific performance and this Article 21 will not apply to any such action or proceeding.

ARTICLE 22

ADDITIONAL COVENANTS AND AGREEMENTS OF LESSEE AND STRATA CORPORATION

22.1 Conduct on Demised Premises

The Lessee and the Strata Corporation and each of them covenant and agree with the Lessor that they will not carry on nor do, nor allow to be carried on or done upon the Strata Lot, the Common Property or the Common Facilities any work, business or occupation which may be a nuisance or which may be improper, noisy or contrary to any Applicable Law for the time being in force. The Lessee also covenants and agrees with the Lessor to comply with the bylaws and rules of the Strata Corporation, with the *Strata Property Act* and any other Applicable Laws.

22.2 Duties of the Strata Corporation

The Strata Corporation must:

- (a) perform its duties under the *Strata Property Act*, and
- (b) require the Lessee to comply with the following:
 - (i) the bylaws and rules of the Strata Corporation, and
 - (ii) the *Strata Property Act*, and regulations thereto and any other enactment or laws.

22.3 Rental Restrictions

This Lease is subject to the bylaws of the Strata Corporation always permitting at a minimum:

- (a) a Strata Lot holder to rent their Strata Lot to a tenant under the *Residential Tenancy Act*, and
- (b) a Strata Lot holder to have in their Strata Lot a dog or cat weighing less than 20 kilograms.

For greater certainty, in addition to the above noted requirements, the Strata Corporation may set out additional restrictions or requirements in its bylaws, in its sole discretion.

22.4 Covenant Respecting Charges and Encumbrances

- (a) In this Section;
 - (i) “**Assumed Agreements**” means, collectively, all charges or encumbrances registered against title to the Strata Lot or the Common Property and all agreements benefitting the Strata Lot or the Common Property filed as legal notations on title to the Strata Lot or the Common Property;
 - (ii) “**Ongoing Benefits**” means all rights, benefits and interest of a party derived from and under each of the Assumed Agreements, and

- (iii) **“Ongoing Obligations”** means all covenants, terms, provisos, stipulations, conditions, obligations and liabilities or a party contained in, existing by virtue of or arising out of each of the Assumed Agreements, including, without limitation: the obligations and responsibilities in respect of ongoing payment obligations and liabilities and the performance of all indemnities and releases.
- (b) For the Term and any renewal thereof, the Lessor and the Lessee, respectively, hereby assign, convey and transfer to the Strata Corporation the Assumed Agreements and the Ongoing Benefits of the Lessor, as owner of the Strata Lot together with a proportionate interest in the Common Property, and the Lessee, as lessee of the Strata Lot together with a proportionate interest in the Common Property, for the sole use and benefit of the Strata Corporation, all without the requirement or necessity of any further acts by or deliveries from the Lessor, Lessee or the Strata Corporation.
- (c) For the Term and any renewal thereof, the Strata Corporation hereby assumes the Assumed Agreements and the respective Ongoing Obligations of the Lessor, as owner of the Strata Lot together with a proportionate interest in the Common Property, and Lessee, as lessee of the Strata Lot together with a proportionate interest in the Common Property and covenants to perform all Ongoing Obligations of the Lessor in accordance with the terms of the Assumed Agreements, except as otherwise agreed to by the Lessor and the Lessee in writing. The assumption made hereby is made in addition to, and without limiting any provision of such charge, encumbrance or agreement that provides that upon the deposit of a leasehold strata plan for the Lands, such as the leasehold strata plan for this Lease, the strata corporation created thereby shall become responsible for and automatically assume, without the need of further documentation, all of the obligations of the owner of the Lands and the original lessee named in the Ground Lease, which are contained in such charge, encumbrance or agreement.
- (d) The Strata Corporation does hereby acknowledge and agree that the assumption herein of the Assumed Agreements and the Ongoing Obligations is made for the benefit of the Lessor and Lessee and may be enforced by such other parties directly against the Strata Corporation.
- (e) In order to better perfect and assure the assumption herein, at the request of the Lessor or the Lessee, the Strata Corporation will execute and deliver an agreement to the other parties to the Assumed Agreements, whereby the Strata Corporation will covenant and agree with such other parties to observe, perform and be bound by and to the Assumed Agreements and the Ongoing Obligations.

ARTICLE 23 SURRENDER OF LEASE

23.1 At the expiration or sooner determination of the Term, unless this Lease is renewed as provided in Article 26, the Lessee shall surrender the Strata Lot (including without limitation, the interest of the Lessee in the Common Property and Common Facilities) to the Lessor in the condition in which it was required to be kept by the Lessee under the provisions of this Lease, except as herein otherwise expressly provided.

ARTICLE 24
QUIET ENJOYMENT AND OWNERSHIP OF LESSEE'S FIXTURES

24.1 Covenant for Quiet Enjoyment

The Lessor covenants and agrees that if the Lessee performs the Lessee's covenants under this Lease, the Lessee may peacefully enjoy and possess the Strata Lot for the Term, without any interruption or disturbance whatsoever from the Lessor or any other person, firm or corporation lawfully claiming from or under the Lessor, provided however that nothing in this Section 24.1 shall limit the rights of inspection conferred upon the Lessor under Section 13.1, the right of the Lessor to show the Strata Lot and to post notice, under Section 13.2.

24.2 Removal of Lessee's Fixtures

At the expiry or earlier termination of the Term or any renewal of it, the Lessee and the Strata Corporation may remove their fixtures and the fixtures of any subtenants and licensees and any persons claiming through or under them. The Lessee and the Strata Corporation shall make good or shall cause such tenants to make good, any damage to the Buildings caused by any removal of the tenants' fixtures.

ARTICLE 25
OVERHOLDING

25.1 The Lessee covenants and agrees with the Lessor that if the Lessor consents in writing to overholding and the Lessee shall hold over and the Lessor shall accept rent after the expiration of the Term, the new tenancy thereby created shall be a tenancy from month to month, at a rent which is the fair market rent of the Strata Lot as agreed between the Lessor and the Lessee, or, failing such agreement, as determined pursuant to Article 21, and not a tenancy from year to year and shall be subject to the covenants and conditions herein contained so far as the same are applicable to a tenancy from month to month.

ARTICLE 26
RENEWAL OF LEASE

26.1 Renewal of Lease

Article 26 is subject to the Ground Lease.

- (a) Without limitation, the Lessor has no obligation to renew this Lease. Paragraphs (b) and (c) only apply with the prior written consent of the Lessor.
- (b) Special provisions concerning the renewal of this Lease by the Lessor are contained in Sections 210, 211, and 212 of the *Strata Property Act* and, except as otherwise provided in Section 26.1(c) of this Lease the provisions of the said Sections 210, 211 and 212 apply to this Lease; the parties hereto agree to conform with and be bound by the said provisions so far as they relate to this Lease.
- (c) Any renewal of this Lease shall be on the same terms and conditions as are herein contained, *mutatis mutandis*, except that (A) the term shall be five (5) years, unless the

Lessor elects to renew for a longer period, and (B) the rent shall be determined as follows, that is to say;

- (i) the Basic Rent payable by the Lessee during each renewal term shall be such annual sum as may be agreed upon in writing by and between the Lessor and the Lessee; provided however that if the Lessor and the Lessee do not agree in writing upon the Basic Rent for any renewal term at least six (6) months prior to the end of the Term or six (6) months prior to the end of the renewal term immediately preceding the renewal term the Basic Rent for which has yet to be determined, the Basic Rent for such last-mentioned renewal term shall be that share of the current market rental value of the Lands apportioned to the Strata Lot in accordance with the formula set out in subsection 273(1)(d) of the *Strata Property Act* at the date which shall be six (6) months prior to the end of the Term or six (6) months prior to the end of the renewal term immediately preceding the renewal term the Basic Rent for which has yet to be determined and such market rental value shall be determined by arbitration. The arbitrators shall within the said six (6) month period appraise and determine the current market rental value of the aforesaid part of the Lands. If the arbitrators shall not have determined such current market rental value within the said six (6) months, the Lessee shall pay to the Lessor during the renewal term pending such determination Basic Rent as provided in Section 26.1(c)(ii). The Lessee covenants and agrees to pay the Basic Rent as so determined for each renewal term in twelve (12) monthly instalments in advance, on the first day of each month in each year during each renewal term, provided however, that should be the date upon and from which such Basic Rent first begins to accrue be a date other than the first day of a month, such Basic Rent shall be apportioned accordingly as to the first and last months of the renewal term. In determining the current market rental value of the aforesaid part of the Lands under this subsection, the arbitrators shall exclude from such determination the value of the Buildings in and upon the Lands (as if the same were fully serviced, but with no other improvements);
- (ii) if the annual Basic Rent at any time payable under any renewal of this Lease is subject to a revision which is dependent upon a determination to be made under the provisions of this Section 26.1(c) but which has not been made, and if consequently, the amount of the revision of the Basic Rent cannot be ascertained within the time limited herein, the Lessee shall, pending the making of the computation, make monthly payments on account of the new annual Basic Rent equal to 1/12th of the percentage of the assessed value of the land portion of the Strata Lot as shown on the most recent assessment notice issued by the B.C. Assessment Authority prior to the expiration of the Term which is equal to the average of the Prime Rates in effect on the last day of December in each of the 10 years immediately preceding the expiration of the Term, and when the revised annual Basic Rent has been ascertained, the Lessee shall pay to the Lessor the amount, if any, by which the monthly instalments of the revised annual Basic Rent payable prior to the date thereof exceeds the amount actually paid between the termination of this Lease or any subsequent renewal thereof, as the case may be, and the final determination of the revised annual Basic Rent, together with interest at the rate of 3% per annum above the Prime Rate on such excess

amount or the Lessor shall credit the Lessee against future instalments of annual Basic Rent with any overpayment, together with interest at the rate of 3% per annum above the Prime Rate on such overpayment.

- (d) When the Basic Rent has been determined (by agreement or arbitration) for any renewal of this Lease under Section 26.1(c) the Lessor shall prepare, execute and deliver to the Lessee not less than three (3) copies of the renewal of this Lease in a form acceptable for registration in the LTO and the Lessee shall execute the renewal lease, attend to the registration thereof and deliver an executed copy of the same to the Lessor with particulars of registration in the LTO endorsed thereon. All fees for the registration of the renewal of this Lease in the LTO shall be borne by the Lessee.

ARTICLE 27

PURCHASE OF LESSEE'S INTEREST IN STRATA LOT BY THE LESSOR

27.1 Effect of the *Strata Property Act*

- (a) Special provisions concerning the purchase of the Lessee's interest in a Strata Lot by the Lessor are contained in Section 214 of the *Strata Property Act* and, except as otherwise provided in this Section 27.1, the provisions of Section 214 of the *Strata Property Act* (as such may be amended or replaced from time to time) apply to this Lease. The parties hereto agree to conform with and be bound by the said provisions so far as they relate to this Lease.
- (b) For certainty and despite the other provisions of Section 214 of the *Strata Property Act*, for the purposes of Section 214(2)(a) of the *Strata Property Act* this Section 27.1 and Addendum "E" attached hereto shall be and constitute a schedule filed with the leasehold strata plan.
- (c) Upon the Termination of this Lease, the Lessor will purchase the Lessee's interest in the Strata Lot. The purchase price for the Lessee's interest in the Strata Lot (the "**Purchase Price**") for all purposes under this Lease and under Section 214 of the *Strata Property Act* will be calculated on the basis set out in Addendum "E" and for certainty, the basis for calculating the Purchase Price will not be determined in accordance with Section 214(2)(b) of, or regulations under, the *Strata Property Act*.
- (d) The Lessor will select and appoint an independent appraiser (the "**First Appraiser**") who will prepare a single written report for each Strata Lot setting forth his or her determination, as of the date of valuation of the Purchase Price (the "**Valuation Date**") which is no earlier than that day which is 240 days prior to the last day of the Term and no later than that day which is 180 days prior to the last day of the Term (or of the then current renewal term, if this Lease has been renewed under section 26.1) of each of
 - (i) the fair market value of the Strata Lot determined in accordance with Addendum "E" hereto (namely, the value of "B" as used in Addendum "E");
 - (ii) the fair market value of the Lands apportioned to the Strata Lot determined in accordance with Addendum "E" (namely, the value of "C" as used in Addendum "E"); and

- (iii) the Purchase Price for the Strata Lot, namely the value of "A" as used in Addendum "E" (the **"First Appraised Purchased Price"**).

The Lessor will deliver the report to the Lessee and the Strata Corporation no earlier than that day which is 180 days prior to the last day of the Term, and no later than that day which is 120 days prior to the last day of the Term (or of the then current renewal term, if this Lease has been renewed under Section 26.1).

- (e) The Lessee agrees that the Strata Corporation will act on behalf of the Lessee (and on behalf of the lessees of all other strata lots within the leasehold strata plan) in reaching an agreement with the Lessor as to the fair market value, as of the Valuation Date, of the Strata Lot (that is, of the value of "B" as used in Addendum "E"), the fair market value of the Lands (that is, of the value of "C" as used in Addendum "E"), and the Purchase Price for the Strata Lot (that is, of the value of "A" as used in Addendum "E").
- (f) If the Strata Corporation agrees with the First Appraiser's determination of the value of the Purchase Price for a Strata Lot (as used in Addendum "E"), it will deliver written notice to the Lessee and the Lessor of its agreement within 15 days of receipt of the First Appraiser's report.
- (g) If the Strata Corporation does not agree with the First Appraiser's determination of the Purchase Price for a Strata Lot, then the Purchase Price will be determined as follows:
 - (i) The Strata Corporation will, within 20 days after receipt of the First Appraiser's report delivered under Section 27.1(d), appoint an independent appraiser (the **"Strata Corporation's Appraiser"**) who will, in turn, within 45 days following their appointment, render a report in writing to the Strata Corporation, Lessee and Lessor setting forth their determination of the values of "B" and "C" as in Addendum "E", and the resulting Purchase Price calculated under Addendum "E" (the **"Second Appraised Purchase Price"**). If the Strata Corporation does not appoint the Strata Corporation's appraiser within the 20 day period set out in this paragraph, or if the Strata Corporation's Appraiser does not render and deliver the report within the 45 day period set out in this paragraph and advise the Lessor in writing within such period that it has done so, the Purchase Price (as used in Addendum "E") shall be the Purchase Price set out in the First Appraiser's report.
 - (ii) If the difference between the First Appraised Purchase Price and the Second Appraised Purchase Price is less than or equal to ten percent (10%) of the lower of the First Appraised Purchase Price and Second Appraised Purchase Price, then the arithmetic mean of the First Appraised Purchase Price and the Second Appraised Purchase Price in respect of a Strata Lot will be the Purchase Price for all purposes under this Section 27.1. If the difference between the First Appraised Purchase Price and the Second Appraised Purchase Price is greater than ten percent (10%) of the lower of the First Appraised Purchase Price and Second Appraised Purchase Price, then within 20 days after the date the Strata Corporation's Appraiser's appraisal report is delivered, the Lessor and the Strata Corporation will attempt to agree on the Purchase Price. If the Purchase Price cannot be agreed within the 20 day period after the date the Strata Corporation's

Appraiser's appraisal report is delivered, the Lessor and the Strata Corporation will appoint a third independent appraiser (the "**Third Appraiser**"). If the Lessor and the Strata Corporation are unable to agree on the appointment of the Third Appraiser within 10 days thereafter, then either of them may make application to a presiding judge of the British Columbia Supreme Court to appoint the Third Appraiser and the other will not raise any objection to such judge's full power and jurisdiction to entertain the application and make the appointment. The Third Appraiser will, within 45 days following his or her appointment, render to the Lessor, Strata Corporation and Lessee a report in writing setting forth his or her determination of the values of "B" and "C" in accordance with Addendum "E" hereto, and the Purchase Price in accordance with Addendum "E" (the "**Third Appraised Purchase Price**") for those Strata Lots for which a First Appraised Purchase Price and Second Appraised Purchase Price were both determined. The Purchase Price (as used in Addendum "E" hereto for all purposes under this Section 27.1 will be the arithmetic mean of the Third Appraised Purchase Price and either the First Appraised Purchase Price or the Second Appraised Purchase Price, whichever is closer in a dollar amount to the Third Appraised Purchase Price.

- (h) All appraisers appointed hereunder will have generally recognized current competence in the valuation of property similar to the Lands and the Strata Lot, which would qualify that appraiser as an expert witness over objection to give opinion testimony in a court of competent jurisdiction.
- (i) All costs and fees of the First Appraiser will be borne by the Lessor, all costs of the Second Appraiser will be borne by the Strata Corporation, and all costs of the Third Appraiser will be borne by the Lessor and the Strata Corporation in equal shares. All costs and expenses incurred by the Lessor, the Strata Corporation or Lessee to retain its own solicitors, other independent consultants or expert witnesses in connection with the appraisal procedure, including any Court application to appoint the Third Appraiser hereunder, will be borne by such person.
- (j) The Purchase Price for the Strata Lot will be paid by the Lessor to the Lessee, less any amounts owing to the Lessor by the Lessee and any amounts paid by the Lessor to satisfy any Mortgage, encumbrance, lien, judgment, taxes or other charges registered in the LTO against this Lease and any other normal adjustments, not later than 30 days after the Purchase Price of the Strata Lot has been determined under this Section 27.1 (c) through (g) and in exchange for which the Lessee will deliver without cost to the Lessor a deed of surrender and conveyance to the Lessor of all the Lessee's interest in the Strata Lot in a form acceptable to the Lessor and such as to effectively surrender and convey to the Lessor all of the interest, right and title of the Lessee in the Strata Lot, free of all liens, charges and encumbrances against such an interest, right and title together with vacant possession of the Strata Lot.
- (k) In the event that subsequent to the date on which the Lessor is obliged to purchase the Strata Lot hereunder, the Strata Lot or any portion thereof shall be damaged by fire or other casualty, then the insurance monies or right to insurance monies resulting from loss or damage to the Strata Lot or any portion thereof required to be purchased by the Lessor and not applied in accordance with the terms of this Lease shall be turned over to

the Lessor upon completion of the sale, and the Lessee hereby expressly covenants and agrees with the Lessor not to oppose any application by the Lessor under Section 160 of the Strata Property Act for payment of insurance proceeds to the Lessor to enable the Lessor to purchase the Lessee's interest in the Strata Lot as required by Section 213(2) of the Strata Property Act.

ARTICLE 28 DESTRUCTION OR DEEMED DESTRUCTION OF THE BUILDINGS

28.1 *Strata Property Act Provisions*

It is hereby acknowledged and agreed by and between the parties hereof that Part 1 of the *Strata Property Act* contains special provisions concerning:

- (a) insurance in Part 9; and
- (b) a decision not to repair or replace damaged property in Section 159;

and the same by Section 200 of the *Strata Property Act*, apply, with the necessary changes in so far as they are applicable, to Part 12 of the *Strata Property Act* which deals with Leasehold Strata Plans. Sections 213, 214, and 215 of the *Strata Property Act* contain further provisions in this regard and the parties hereto shall be entitled to exercise such rights with such consequences as are therein set forth and in the event that there shall be any conflict or inconsistency between the rights and obligations of the parties herein contained and the said provisions of the *Strata Property Act*, the said provisions of the *Strata Property Act* shall prevail; PROVIDED HOWEVER that if any of the said provisions of the *Strata Property Act* are amended so as to make them no longer applicable to this Lease, then on the date on which such amendment shall come into force, the provisions of Addendum "D" attached hereto shall apply *mutatis mutandis* to this Lease and be binding on the parties to the extent that the said provisions of the *Strata Property Act* are no longer applicable hereto.

ARTICLE 29 NOTICE

29.1 All notices, demands and requests which may be or are required to be given under this Lease shall be in writing and shall be sufficiently given if served personally upon the party or an executive officer of the party for whom it is intended or mailed prepaid and registered addressed to the parties at the addresses set out on page 1 hereof, or such other addresses as the parties may from time to time advise by notice in writing. Mortgagees hereof shall supply their respective mailing addresses to the Lessor and the Lessee. The date of receipt of any such notice, demand or request shall be deemed to be the date of delivery if such notice, demand or request is served personally or if mailed aforesaid on the second business day next following the date of such mailing. Provided however that if mailed, should there be between the time of mailing and the actual receipt of the notice a mail strike, slowdown of postal service or other labour dispute which affects the delivery of such notice, then such notice shall be deemed to be received when actually delivered.

ARTICLE 30 MISCELLANEOUS

30.1 Conflict between Provisions of Model Strata Lot Lease and *Strata Property Act* and Ground Lease

In the event that the terms of this Model Strata Lot Lease or the duties and obligations of the Lessor, the Lessee or the Strata Corporation under the terms of this Model Strata Lot Lease conflict or are inconsistent with the provisions of the *Strata Property Act* applicable to leasehold Strata Lots the said provisions of the *Strata Property Act* shall prevail. In the event that the terms of this Model Strata Lot Lease or the duties and obligations of the Lessor, the Lessee or the Strata Corporation under the terms of this Model Strata Lot Lease conflict or are inconsistent with the provisions of the Ground Lease, the said provisions of the Ground Lease shall prevail.

30.2 New Home Warranty Program of British Columbia

The Lessee covenants and agrees with the Lessor to enroll each dwelling unit forming part of the Buildings, if any, which the Lessee commences to construct in accordance with Section 6.4 of this Lease with a new home warranty provider who has been approved under the *Home Owner Protection Act*, S.B.C 1999, Ch. 21 (the "**Home Warranty Program**") and provide the Lessor with evidence satisfactory to the Lessor that such dwelling units have been so enrolled. If the Home Warranty Program terminates prior to all the dwelling units in such other home warranty program as may then be available in the Province of British Columbia that is satisfactory to the Lessor, but if no such alternate program is then available, the Lessee shall be relieved from its obligations under this Section with respect to the balance of the dwelling units then remaining to be constructed and not previously enrolled in the Home Warranty Program.

30.3 Statements by Lessor and Lessee

The Lessor and the Lessee agree that at any time and from time to time upon not less than 30 days prior request by the other party, each will execute, acknowledge and deliver to the other a statement in writing certifying:

- (a) That this Lease is unmodified and in full force and effect or if there have been modifications that the same are in full force and effect as modified and identifying the modifications;
- (b) The dates to which the rent and other charges have been paid and the request shall specify the charges in respect of which such information is required, and
- (c) That, so far as the maker of the statement knows, without having conducted any searches or made any particular enquiries, the party who requests the statement is not in default under any provisions of this Lease, or, if in default, the particulars thereof.

This certification shall be provided by the Lessor on the following conditions:

- (i) that neither the Lessor nor the party signing on behalf of the Lessor be liable for any damage or expense should for any reason, including, without limitation, negligence, the information provided be inaccurate, incomplete or misleading; and

- (ii) that should any or all of the information be inaccurate, incomplete or misleading, for any reason, including, without limitation, negligence, the Lessor shall, as against any person or corporation who may rely on the contents of this certification statement, be able to assert and enforce its full rights in strict accordance with this Lease as if this certification statement had not been signed on behalf of the Lessor and as if any or all persons and corporations who may rely on the contents of the certification statement had not relied on the contents of the certification statement.

30.4 Time shall be of the essence of this Lease, save as herein otherwise provided.

30.5 This Lease may not be modified or amended except by an instrument in writing of equal formality herewith executed by the Lessor, the Lessee and the Strata Corporation or by the successors or assignees of the Lessor and the successors or permitted assigned of the Lessee.

30.6 Execution of the Model Strata Lot Lease by the Strata Corporation

- (a) If the Strata Corporation fails to execute this Lease and deliver the same to the Lessor together with a resolution of the Strata Corporation authorizing the execution of the Lease in accordance with Section 26.3 of the Ground Lease then the Lessee shall observe and perform all of those covenants, conditions and agreements which the Strata Corporation would have been bound to observe and perform by the terms of this Lease had it executed and delivered the same as aforesaid.
- (b) If at any time during the Term the Strata Corporation does not have the right, power and authority to observe and perform any of the covenants, conditions and agreements which the Strata Corporation is bound to observe and perform then the Lessee shall observe and perform all of those covenants, conditions and agreements which the Strata Corporation would have been obligated to observe and perform had the Strata Corporation such right, power and authority.

30.7 Release from Liability

The Lessor covenants and agrees that the Original Lessee, but not including any lessee, sublessee or tenant of the Lessee or any other party claiming under the Lessee or any party whom a Strata Lot is assigned, transferred or conveyed under the terms of Section 16.2(e) of the Ground Lease, shall be released and discharged from any and all of its liabilities and obligations under the covenants, terms and conditions contained in the Model Strata Lot Lease in respect of each Strata Lot on the date which is the later of:

- (a) the date the leasehold interest of the said named Lessee in that Strata Lot is assigned to the first purchaser thereof, or
- (b) the date of Substantial Completion of the Buildings and Common Facilities as certified by the Architect or other professional consultant of the Lessee,

PROVIDED THAT the Lessee shall have paid the Rent and other monies required to be paid hereunder and observed and performed the covenants and agreements herein to be performed by the said named Lessee up to and including the said date.

30.8 **Enurement**

It is further agreed and declared by the Lessor and the Lessee that these presents shall extend to, be binding upon and enure to the benefit of the Lessor, the Lessee and the Strata Corporation and their respective administrators, successors and assigns and if there is more than one Lessee named the word "Lessee" shall be deemed to include each of such Lessees (as the case may be) their several administrators, successors and assigns, and they shall be jointly and severally liable under this Lease.

30.9 **Interpretation**

The captions and headings throughout this Lease are for the convenience and reference only and the words and phrases contained therein shall in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision of or the scope or intent of this Lease nor in any way affect this Lease.

30.10 **Lease Registration**

The Lessee must register this Lease in the LTO and all costs and expenses in connection with the registration shall be borne by the Lessee. The Lessee acknowledges and agrees that at the expiration or earlier termination of the Lease, the Lessee will discharge such registration at its sole cost and expense.

30.11 **Lease Carefree to Lessor**

Except where expressly provided to the contrary in this Lease, and where the Lessor's costs of so acting are expressly covered under this Lease by a third party such as an insurer or the Lessee, the Lessor is under no obligation whatsoever to enter or re-enter the Lands to carry out any repair, maintenance, or replacement of any improvement, landscaping or other attribute of a Building or the Lands. For certainty, the Lessee acknowledges and agrees that the Lessor is prohibited by law from incurring a capital liability under this Lease.

30.12 **Approval or Consent**

A reference in this Lease to approval or consent of the Lessor shall be a reference to approval by the Lessor's Chief Administrative Officer or their designate. Nothing in this section precludes the Chief Administrative Officer from referring an approval or consent to the District's Council.

30.13 **Powers Preserved**

Except as expressly set out in this Lease, nothing contained or implied in this Lease shall fetter in any way the discretion of the District or the District's Council. Further, nothing contained or implied in this Lease shall derogate from the obligations of the Lessee under any other agreement with the District or, if the District so elects, prejudice or affect the District's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Community Charter* or the *Local Government Act*, as amended or replaced from time to time, or act to fetter or otherwise affect the District's discretion, and the rights, powers, duties and obligations of the District under all public and private statutes, by-laws, orders and regulations, which may be, if the District so elects, as fully and effectively exercised in relation to the Project or Parcel B as if this Lease had not been executed and delivered by the Lessee and the District.

IN WITNESS WHEREOF the Lessor, the Lessee and the Strata Corporation have hereunto caused to be affixed their respective seals attested by the signatures of their respective proper officers duly authorized for such purpose.

**THE CORPORATION OF THE DISTRICT OF
WEST VANCOUVER**

by its Authorized Signatories:

Authorized Signatory

Authorized Signatory

●
by its Authorized Signatories:

Authorized Signatory

Authorized Signatory

THE OWNERS, LEASEHOLD STRATA PLAN

by its Authorized Signatories:

Authorized Signatory

Authorized Signatory

ADDENDUM “A” TO SCHEDULE B

FORM C

This is the Addendum referred to in Section 17.1
of the Model Strata Lot Lease



Land Title Act
Charge
General Instrument – Part 1

1. Application

[Applicant Name]
[Applicant Address]
BC
[Applicant Phone Number]

[Applicant File Number]

2. Description of Land

PID/Plan Number Legal Description

[PID] STRATA LOT ____ DISTRICT LOT ____ LEASEHOLD STRATA PLAN ____

3. Nature of Interest

Type	Number	Additional Information
ASSIGNMENT OF LEASE	CA	

4. Terms

Part 2 of this instrument consists of:

(a) Filed Standard Charge Terms

D F Number: ST ____

Includes any additional or modified terms.

5. Transferor(s)

[GIVEN NAME(S)] [LAST NAME]

6. Transferee(s)

[GIVEN NAME(S)] [LAST NAME]
[ADDRESS]

[OCCUPATION]



7. Additional or Modified Terms

(a) In consideration of the sum of \$<@> paid by the Purchaser to the Vendor (the receipt and sufficiency of which is hereby acknowledged by the Vendor), the Vendor as beneficial owner hereby assigns to the Purchaser the Vendor's interest in the Strata Lot, to hold unto the Purchaser for all the residue now unexpired of the term of the Lease, subject to the payment to the District of the rent reserved in the Lease, to the performance and observance of the covenants on the part of the Lessee to be performed and observed, and the conditions contained in the Lease, all in so far as the same relate to the Strata Lot.

(b) The District hereby consents to this assignment.

THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER

Authorized Signatory

Name:

Authorized Signatory

Name:

8. Execution(s)

This instrument creates, assigns, modifies, enlarges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Witnessing Officer Signature

Execution Date

Transferor Signature(s)

YYYY-MM-DD

[Given Name(s)] [Last Name]

Officer Certification

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.



Land Title Act
Charge
General Instrument – Part 1

Witnessing Officer Signature

Execution Date

Transferor Signature(s)

YYYY-MM-DD

[Given Name(s)] [Last Name]
Transferee

Officer Certification

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

Electronic Signature

Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the *Land Title Act*, RSBC 1996 c.250, that you certify this document under section 168.41(4) of the act, and that an execution copy, or a true copy of that execution copy, is in your possession.

ADDENDUM "B" TO SCHEDULE B

This is the Addendum referred to in Section 17.1
of the Model Strata Lot Lease

STANDARD CHARGE TERMS

Filed by: LIDSTONE & COMPANY LAW CORPORATION
1300 – 128 Pender Street West
Vancouver, BC V6B 1R8

These Standard Terms are deemed to be included in and form part of every Assignment of Lease which incorporates them in a General Instrument – Part 1.

ASSIGNMENT OF LEASE

DEFINITIONS

In this Assignment of Lease:

- (a) **"Assignment Form"** means the Form C under the Land Title (Transfer Form) Regulations (British Columbia), as amended from time to time, which refers to these filed standard charge terms and is executed by the Purchaser and all schedules and addenda attached to such Form C;
- (b) **"Ground Lease"** means that certain ground lease registered in the LTO under the number set out in Item 2 of the Assignment Form;
- (c) **"Land"** means the lands described in the Ground Lease;
- (d) **"Lease"** means the model strata lot lease attached to the Ground Lease;
- (e) **"LTO"** means the Land Title Office;
- (f) **"Original Lessee"** means the lessee named in the Ground Lease;
- (g) **"Purchaser"** means the person or person described in Item 6 of the Assignment Form as the transferee;
- (h) **"Strata Lot"** means all of the estate, right, title and interest of the Vendor in and to the land described or referred to in Item 2 of the Assignment Form;
- (i) **"District"** means the Corporation of the District of West Vancouver, having an office at 750 17th Street, West Vancouver, BC, V7V 3T3;
- (j) **"Vendor"** means the person or persons described in Item 5 of the Assignment Form as the transferor.

WHEREAS:

- A. By the Ground Lease the District, as lessor, did demise and lease the Lands to the Original Lessee, as lessee, on the terms and conditions contained in the Ground Lease.
- B. The Lands have been subdivided into strata lots by the deposit of a leasehold strata plan in the LTO in accordance with the provisions of the *Strata Property Act*, S.B.C. 1998, Chapter 43 and the *Land Title Act*, R.S.B.C. 1996, chapter 250 and the Registrar has issued in the name of the District, as registered owner in fee simple, new certificates of title to each of the strata lots shown upon the leasehold strata plan;
- C. The deposit of the leasehold strata plan converted the Ground Lease into individual leases in the name of the Original Lessee, in respect of the interest of the Original Lessee in each strata lot including its share in the common property, at a rent, premium or other consideration, and subject to the applicable terms and conditions contained in the Ground Lease and in the Lease and to the provisions of the said *Strata Property Act* and regulations thereto;
- D. The Vendor, at the request of the Purchaser, has agreed to assign to the Purchaser the Vendor's interest in the Strata Lot for all the residue now unexpired of the said term of the Lease subject to the rent reserved in the Lease and to the performance and observance of the covenants on the part of the Lessee and the conditions contained in the Lease so far as the same relate to the Strata Lot.
- E. The District hereby consents to this assignment.

NOW THIS ASSIGNMENT WITNESSETH as follows:

- 1. For valuable consideration paid by the Purchaser to the Vendor (the receipt and sufficiency of which is hereby acknowledged by the Vendor), the Vendor as beneficial owner hereby assigns to the Purchaser the Vendor's interest in the Strata Lot, to hold unto the Purchaser for all the residue now unexpired of the term of the Lease subject to the payment to the District of the rent reserved in the Lease, to the performance and observance of the covenants on the part of the lessee to be performed and observed, and the conditions contained in the Lease, all in so far as the same relate to the Strata Lot.
- 2. The Purchaser covenants with the Vendor and the District and each of them that the Purchaser shall during all the residue now unexpired of the term of the Lease and every renewal thereof perform and observe the covenants on the part of the lessee to be performed and observed and the conditions contained in the Lease as fully and effectually as if the Lease contained a separate demise of the Strata Lot at the rent referred to in the Lease.
- 3. The Purchaser covenants with the Vendor and the District and each of them to indemnify both the Vendor and the District and each of them against all actions, suits, costs, expenses, charges, damages, losses, claims and demands for or on account of non-payment of the rent referred to in the Lease and the non-performance or non-observance of the said covenants and conditions, so far as the same relate to the Strata Lot.

4. The Vendor covenants with the Purchaser that the Lease is a valid and subsisting lease, that the covenants, provisions, and conditions thereof on the part of the lessee have been duly performed and observed up to the date hereof, that the Vendor is entitled to grant this assignment, that subject to the payment of the rent referred to in the Lease and the observance and the performance of the covenants and conditions of the Lease, the Purchaser may enjoy the Strata Lot for all the residue now unexpired of the term of the Lease and any renewal thereof, without interruption by the Vendor or any person claiming through the Vendor and that the Vendor and the District shall at all times hereafter at the request and cost of the Purchaser, execute such further assurance in respect of this Assignment as the Purchaser may reasonably require.
5. The Purchaser acknowledges to the Vendor and the District that the Purchaser has had the opportunity to read the contents of the Ground Lease including the Lease attached thereto, and has had the opportunity to obtain independent legal advice on the terms of the Lease which forms the agreement between the District and Purchaser. For greater certainly, the Purchaser further acknowledges that it understands Article 26 and Article 27 of the Lease regarding renewals and the purchase of the lessee's interest in the Strata Lot upon lease expiry and agrees to be bound by those provisions.
6. The District hereby releases and forever discharges the Vendor from and against all obligations coming due or arising under the Lease from and after the closing of this assignment of the Vendor's interest in the Strata Lot to the Purchaser, it being understood and agreed that the Vendor shall remain liable to the District for all obligations coming due or arising under the Lease up to the date of such closing.
7. It is hereby agreed by the parties hereto that this assignment shall enure to the benefit of and be binding upon the parties hereto, their heirs, executors, administrators, successors and assigns, respectively.

END OF SET

ADDENDUM "C" TO SCHEDULE B

This is the Addendum referred to in
Section 18.4 of the Model Strata Lot Lease

THIS AGREEMENT made the _____ day of _____, 2_____

BETWEEN:

(the "**Lessee**")

AND:

(the "**Mortgagee**")

AND:

THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER

750 17th Street
West Vancouver, BC V7V 3T3

(the "**District**")

GIVEN THAT:

- A. By a ground lease dated for reference the ● day of ●, 2022 (hereinafter called the "**Ground Lease**"), and registered in the LTO under registration number ●, on the terms and conditions therein contained, the District, as lessor, did demise and lease to the Lessee, as lessee, those lands in the District of West Vancouver, in the Province of British Columbia, more particular known and described as:

CIVIC	PID	LEGAL
2195 Gordon Avenue [NTD: Address to be confirmed after subdivision], West Vancouver, BC	●	●

(hereinafter called the "**Lands**")

- B. The Lands have been subdivided into strata lots by the deposit of a leasehold strata plan in the LTO in accordance with the provisions of the *Strata Property Act*, S.B.C. 1998, Chapter 43, and the *Land Title Act*, R.S.B.C. 1996, Chapter 250 and the Registrar has issued in the name of the District as registered owner in fee simple, new certificates of title to each of the strata lots shown upon the leasehold strata plan;
- C. The deposit of the leasehold strata plan converted the Ground Lease into individual leases in the name of the District, in respect of the interest of the Lessee in each strata lot including its share in the common property, at a rent premium or other consideration, and subject to the applicable terms and conditions contained in the Ground Lease and in the model strata lot lease attached

thereto and to the provisions of the said *Strata Property Act* and the regulations thereto (the model strata lot lease being hereinafter referred to as the “**Lease**”);

- D. • has been assigned its interest in strata lot •, Leasehold Strata Plan EPS • (hereinafter called the “**Leased Premises**”), to the Lessee;
- E. By an indenture of mortgage (hereinafter called the “**Mortgage**”) made the • day of •, 2• between the Lessee as Mortgagor, and the Mortgagee, and registered in the LTO under No. • the Lessee did demise and assign by way of mortgage unto the Mortgage all the Lessee’s right, title and interest in the Leased Premises under the Lease to secure a loan in the sum of \$•), and
- F. The mortgagee is a “**Mortgagee**”, as defined under Section 1.1 of the Lease and desires to have every opportunity to protect its interest and security.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and of the sum of \$1.00 now paid by each of the Mortgagee, the District and the Lessee to the others (the receipt of which is hereby acknowledged by each of the parties):

- 1. The District covenants and agrees with the Mortgagee that the District:
 - (a) will not accept a surrender of the Lease, in whole or in part, without the prior written consent of the Mortgagee, not to be unreasonably withheld, and
 - (b) will not agree to any modification or amendment to the Lease:
 - (i) which may adversely affect the Mortgagee’s security without the prior written consent of the Mortgagee, such consent not to be unreasonably withheld (provided that if, the Mortgagee has neither provided its consent nor advised the District in writing within 45 days of receipt of a request from the District for its consent, that it will not provide its consent, the Mortgagee will be deemed to have consented to the modification or amendment), or
 - (ii) which does not materially adversely affect the Mortgagee’s security without giving the Mortgagee seven days’ prior written notice.
- 2. The Lessee acknowledges and represents to the Mortgagee that it has entered into possession of the Leased Premises under the terms of the Lease.
- 3. The District covenants and agrees to grant and provide to the Mortgagee all rights, assurance and notice afforded under the terms of the Lease to a “Mortgagee”, as defined in the Lease, and, without limiting the generality of the foregoing, all remedies afforded a “Mortgagee” under the Lease.
- 4. The District and the Lessee mutually covenant and agree, at any time and from time to time, upon not less than 30 days prior request by the Mortgagee, to execute, acknowledge and deliver to the Mortgagee a statement in writing certifying:
 - (a) that the Lease is unmodified and in full force and effect or if there have been modifications that same is in full force and effect as modified and identifying the modifications;

- (b) the dates to which the rent and other charges payable under the Lease have been paid, provided that the request specifies with particulars the charges in respect of which such information is required, and
 - (c) that to the best of the knowledge of the maker of the statement, without having conducted any searches made any particular enquiries, the other party to the Lease is not in default under the provisions of the Lease, or, if in default, the particulars thereof.
- 5. If the Mortgagee acquires title to the Lessee's interest in the Leased Premises, the Mortgagee covenants and agrees to attorn as tenant under the Lease under the terms thereof for so long as it remains tenant and has not assigned the balance of the Term and hereby acknowledges that it has had the opportunity to read the Lease and upon attorning as tenant under the Lease shall adopt the covenants and agreements of the Lease on the part of the Lessee to be performed and observed as though such provisions were incorporated in and formed part of this agreement provided that the provisions of this Section 5 shall not limit or affect the District's rights to re-enter, seek an Order for Sale, terminate or forfeit the Lease if the Mortgagee fails to comply with the requirements of Section 18.3 of the Lease. If the Mortgagee complies with the requirements of this Section 5 and Section 18.3 of the Lease, the Mortgagee shall be given and afforded the right, privileges and benefits of the Lessee under the Lease.
- 6. If the Lessee and the District cannot agree as to any matters regarding the Lease and they decide that the resolution of that matter is to be determined by arbitration under the arbitration provisions of the Lease, the Mortgagee shall be given adequate notice of such arbitration proceedings and if in the reasonable opinion of the Mortgagee, such proceedings affect its mortgage security, the Mortgagee shall be given a reasonable opportunity by the Lessee and the District to participate in the arbitration proceedings if the Mortgagee consider such proceedings may affect its mortgage security.
- 7. If the Mortgagee shall have fully cured any default in the payment of any Rent (as defined in the Lease) or any other amount required to be paid by the Lessee under the Lease and shall continue to pay currently such monetary obligations as and when the same fall due then if the Mortgagee is prohibited, by any process or injunction issued by any court by reason of any action by any court having jurisdiction over any proceeding involving the Lessee, from commencing or prosecuting foreclosure or other appropriate proceedings of the nature thereof or from obtaining possession of the Leased Premises, then the time specified in Section 18.3 of the Lease for commencing or prosecuting such foreclosure or other proceedings or for curing defaults other than payment of Rent (as defined in the Lease) or any other amount required to be paid by the Lessee under the Lease shall be extended for the period of such prohibition or injunction.
- 8. If the Mortgagee has cured all defaults and contingencies of which the Mortgagee has received notice from the District under Section 18.3 of the Lease, then it shall be entitled to permit the Lessee to continue as tenant of the Leased Premises unless the Mortgagee has acquired the right, title and interest of the Lessee in the Leased Premises under the Lease, in which case the provisions of Section 5 hereof shall apply. For the purposes of this clause the events contemplated by Article 18 of the Ground Lease shall not constitute a default or contingency.
- 9. This Agreement shall be deemed to terminate and be of no further force and effect at such time as the Mortgage has been paid in full, has been terminated or released in accordance with the

terms and conditions therein contained, or has been released or discharged from the Leased Premises.

10. The Mortgagee covenants and agrees that subject to the provisions of Section 18.3 of the Ground Lease, all of the rights of the Mortgagee, whether statutory or at common law, shall be subject to the rights of the District under the Ground Lease.
11. This agreement shall enure to the benefit of and shall be binding upon the parties hereto, and their respective successors and assigns.

IN WITNESS WHEREOF this Agreement has been executed on the day, month and year first above written.

SIGNED, SEALED AND DELIVERED by

• and • in the presence of:

Witness Signature

Address

Occupation
(as to both signatures)

**THE CORPORATION OF THE DISTRICT OF
WEST VANCOUVER**

Authorized Signatory

Authorized Signatory

Authorized Signatory

Authorized Signatory

ADDENDUM “D” TO SCHEDULE B

This is the Addendum referred to in
Section 28.1 of the Model Strata Lot Lease

Section 28.1 Rent not abate

The partial destruction or damage or complete destruction by fire or other casualty of the Buildings shall not terminate this Lease or entitle the Lessee to surrender possession of the Strata Lot or demand any abatement or reduction of the Basic Rent or Additional Rent or other charges payable under this Lease, any law or statute now or in the future to the contrary notwithstanding.

Section 28.2 Lessee's obligations when Buildings damaged or partially destroyed

The Strata Corporation and the Lessee covenant and agree with the Lessor that, in the event of damage to partial destruction of the Buildings, the Lessee, subject to the regulations and requirements of the District and any other governmental authority having jurisdiction must either:

- (a) replace any part of the Buildings destroyed with a new structure in accordance with any agreement which may be made by the Lessee with the Lessor; or
- (b) repair or replace such damage or destruction, in the absence of any such agreement.

Section 28.3 Lessee's obligations when Building completely or substantially destroyed

The Strata Corporation and the Lessee covenant and agree with the Lessor that in the event of complete or substantially complete destruction of the buildings the Lessee, subject to the regulations and requirements of the District and any other governmental authority having jurisdiction, must either:

- (a) reconstruct or replace the Buildings, with a new structure in accordance with any agreement which may be made by the Lessee with the Lessor; or
- (b) in the absence of any such agreement, replace the Buildings with a new structure substantially comparable to the structure or structures being replaced.

Section 28.4 Replacement, repair or reconstruction under Section 28.2 or 28.3 to be carried out in compliance with Sections 9.2 and 10.1

Any replacement, repair or reconstruction of the Buildings or any part thereof under the provisions of Section 28.2 or 28.3 hereof shall be made or done in compliance with the provisions of Article 6, Article 9 and Article 10 of this Lease.

ADDENDUM "E" TO SCHEDULE B

This is the Addendum referred to in Section 27.1 of the Model Strata Lot Lease

PURCHASE PRICE

For the purposes of Article 27 of this Lease and Section 214(2)(a) of the Strata Property Act (or the equivalent section of any successor legislation), the basis for calculating the purchase price to be paid by the Lessor for the Lessee's interest in the Strata Lot is set out below:

$$A = B - C$$

Where:

A represents the Purchase Price to be paid by the Lessor for the Lessee's interest in the Strata Lot as at the Valuation Date (as defined in Article 27), not including the land value, and is calculated as prescribed under this Schedule.

B represents the fair market value, at the Valuation Date, of the Strata Lot, as determined in accordance with the Terms and Conditions set out in this Schedule. The Strata Lot is comprised of the constructed dwelling unit and the land comprising the Strata Lot.

C represents the fair market value, at the Valuation Date, of the Lands as determined in accordance with the Terms and Conditions set out in this Schedule, apportioned to the Strata Lot based on the Unit Entitlement as defined in the *Strata Property Act*.

Terms and Conditions

Terms and Conditions for each of the above are set out below.

A shall be reduced by the value, at the Valuation Date, of any alterations, repairs or replacements to either the Strata Lot or to the Common Property as apportioned to the Lessee, effected by the Lessor, as determined by the Lessor acting reasonably.

For **B** and **C**, in respect of the constructed dwelling unit and the land comprising the Strata Lot, the fair market value is to be determined in accordance with the following:

- (i) the fair market value of the constructed dwelling unit means the appraised value of the unit based on recent comparable sales of such units that are similar in terms of age, size, physical condition, location, height above ground, view, form of construction, and other significant factors that affect strata residential dwelling unit values, and
 - (A) held as an estate in fee simple (and not encumbered by this Lease)
- (ii) the fair market value of the land comprising part of the Strata Lot means the appraised value of the Lands apportioned to the Strata Lot based on the Unit Entitlement as defined in the Strata Property Act and based on recent comparable sales of development sites that are similar in terms of size, parcel shape, location, view and other significant factors that affect land values for strata residential development sites, as though
 - (A) held as an estate fee simple (and not encumbered by this Lease);

- (B) zoned to allow the amount of floorspace, height, type and form of development approved under this Lease;
- (C) vacant, fully serviced, and approved for development in accordance with the zoning assumption in (B); and
- (D) encumbered by all legal notations, charges, liens and interests noted or registered on titles to all Strata Lots within the Leasehold Strata Plan and to the Common Property as of the Valuation Date, not including permitted financial encumbrances granted by the Lessees of the Strata Lots within the Leasehold Strata.

For greater certainty, notwithstanding this Addendum or anything else contained in this Lease, it is understood and agreed that the Lessee does not hold the Strata Lot in fee simple and does not have any fee simple interest in the Lands and is not entitled to any of the value of the Lands in calculating the purchase price to be paid by the Lessor to the Lessee for the Lessee's interest in the Strata Lot.

SCHEDULE C
MORTGAGEE AGREEMENT

Under Section 17.4 of Ground Lease

THIS AGREEMENT made the • day of •, 20•.

BETWEEN:

•

(the “**Lessee**”)

AND:

•

(the “**Mortgagee**”)

AND:

THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER

(the “**Lessor**”)

GIVEN THAT

- A. By a ground lease dated for reference the • day of •, • (the “**Ground Lease**”), and registered in the LTO under registration number _____, on the terms and conditions therein contained, the Lessor, as lessor, did demise and lease to the Lessee, as lessee, those lands in the District of West Vancouver, in the Province of British Columbia, more particularly known and described as:

Parcel Identifier: **[NTD: Legal description of Parcel B to be inserted once subdivision is registered]**.

(the “**Lands**”);

- B. By an indenture of mortgage (hereinafter called the “**Mortgage**”) dated for reference •, 20• between the Lessee as mortgagor, and the Mortgagee, and registered in the LTO under no. _____ the Lessee did sublease by way of mortgage unto the Mortgagee the Lessee’s right, title and interest in the Lands under the Ground Lease to secure a principal amount in an unspecified amount plus interest and costs, all as more particularly set forth therein;
- C. As contemplated in the Ground Lease, the Lands may be subdivided into strata lots by deposit of a leasehold strata plan in the LTO (the “**Leasehold Strata Lot**”); and
- D. The Mortgagee is a “Mortgagee”, as defined under Section 1.1 of the Ground Lease and desires to have every opportunity to protect its interest and security.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and of the sum of \$1.00 now paid by each of the Mortgagee, the Lessor and the Lessee to the others (receipt of which is hereby acknowledged by each of the parties):

1. The Lessor covenants and agrees with the Mortgagee that the Lessor:
 - (a) will not accept a surrender of the Ground Lease, in whole or in part, without the prior written consent of the Mortgagee, not to be unreasonably withheld;
 - (b) will not enter into any agreement for the cancellation, surrender or subordination of the Ground Lease, in whole or in part, without the prior written consent of the Mortgagee;
 - (c) will not agree to any modification or amendment to the Ground Lease:
 - (i) which may adversely affect the Mortgagee's security, without the prior written consent of the Mortgagee, such consent not to be unreasonably withheld (provided that if the Mortgagee has neither provided its consent nor advised the Lessor in writing within 45 days of receipt of a request from the Lessor for its consent, that it will not provide its consent, the Mortgagee will be deemed to have consented to the modification or amendment), or
 - (ii) which does not adversely affect the Mortgagee's security without giving the Mortgagee seven days' prior written notice, and
 - (d) has been furnished with a copy of and has consented to the granting of the Mortgage.
2. The Lessee acknowledges and represents to the Mortgagee that it has entered into possession of the Lands under the terms of the Ground Lease.
3. The Lessor and the Lessee hereby mutually covenant and agree with the Mortgagee that any sale or assignment of the leasehold estate contemplated under Section 17.1 of the Ground Lease, may be made to any purchaser or assignee notwithstanding anything to the contrary in the Ground Lease if such sale or assignment is court approved or otherwise made in connection with the enforcement of the Mortgagee's security.
4. The Lessor covenants and agrees to grant and provide to the Mortgagee all rights, assurance and notice afforded under the terms of the Ground Lease to a "Mortgagee", as defined in the Ground Lease, and, without limiting the generality of the foregoing, all remedies afforded a "Mortgagee" under the Ground Lease.
5. The Lessor and the Lessee mutually covenant and agree, at any time and from time to time, upon not less than 30 days prior request by the Mortgagee, to execute, acknowledge and deliver to the Mortgagee a statement in writing certifying:
 - (a) that the Ground Lease is unmodified and in full force and effect or if there have been modification that same is in full force and effect as modified and identifying the modifications;
 - (b) that all Basic Rent has been fully paid and the dates to which any other forms of Rent and other charges payable to the Lessor under the Ground Lease have been paid,

provided that the request specifies with particulars the charges in respect of which such information is required, and

- (c) that to the best knowledge of the maker of the statement, without having conducted any searches or made any particular enquiries, the other party to the Ground Lease is not in default under the provisions of the Ground Lease, or if in default, the particulars thereof.
- 6. If the Mortgagee acquires title to the Lessee's interest, as lessee, in the Lands, the Mortgagee covenants and agrees to attorn as tenant under the Ground Lease under the terms thereof for so long as it remains tenant and has not assigned the balance of the Term, as defined in Section 1.1 of the Ground Lease, and hereby acknowledges that it has had the opportunity to read the Ground Lease and upon attorning as tenant under the Ground Lease shall adopt the covenants and agreements of the Ground Lease on the part of the Lessee to be performed and observed as though such provisions were incorporated in and formed a part of this Agreement; provided that the provisions of this Section 6 shall not limit or affect the Lessor's rights to re-enter, terminate or forfeit the Ground Lease if the Mortgagee fails to comply with the requirements of Section 17.2 of the Ground Lease. If the Mortgagee complies with the requirements of this Section 6 and Section 17.2 of the Ground Lease, the Mortgagee shall be given and afforded the right, privileges and benefits of the Lessee under the Ground Lease. For the purposes of this clause, the requirements of Section 17.2 of the Ground Lease do not include any requirement that the Mortgagee cure any default or contingency referred to in Article 18 of the Ground Lease.
- 7. If the Mortgagee is the Government of Canada, or a Crown Corporation of the Government of Canada which does not insure risk, and if the Lessor has given to the Mortgagee notice of a default or contingency or notice of the bankruptcy or insolvency of the Lessee entitling the Lessor to re-enter or terminate or forfeit the Ground Lease, and the Mortgagee commences to cure the default or contingency, then upon the Mortgagee curing the default or contingency and if the Mortgagee attorns as tenant to the Lessor, then during the period that the Mortgagee is the tenant of the Lessor under the Lease, the Mortgagee shall not be under any obligation to take out and keep in force by the Lessee any of the insurance required to be taken out and kept in force by the Lessee under the Ground Lease; provided however that the provisions of this Section shall not relieve the Mortgagee, as tenant, from any of the other covenants, conditions and agreements under the Ground Lease.
- 8. If the Lessee and the Lessor cannot agree as to any matters regarding the Ground Lease and they decide that the resolution of that matter is to be determined by arbitration under the arbitration provisions of the Ground Lease, the Mortgagee shall be given adequate notice of such arbitration proceedings and if in the reasonable opinion of the Mortgagee, such proceedings may affect its mortgage security, the Mortgagee shall be given a reasonable opportunity by the Lessee and the Lessor to participate in the arbitration proceedings if the Mortgagee considers such proceedings may affect its mortgage security.
- 9. If the Mortgagee shall have fully cured any default in the payment of any Rent (as defined in the Ground Lease) or any other amount to be paid by the Lessee under the Ground Lease and shall continue to pay currently such monetary obligations as and when the same fall due then if the Mortgagee is prohibited, by any process or injunction issued by any court by reason of any action by any court having jurisdiction over any proceeding involving the Lessee, from commencing or prosecuting foreclosure or other appropriate proceedings of the nature thereof or from obtaining possession of the Lands, then the time specified in Section 17.2 of the Ground Lease for

commencing or prosecuting such foreclosure or other proceedings or for curing defaults other than payment of Rent (as defined in the Ground Lease) or any other amount required to be paid by the Lessee under the Ground Lease shall be extended for the period of such prohibition or injunction.

10. If the Mortgagee has cured all defaults and contingencies of which the Mortgagee has received notice from the Lessor under Section 17.2 of the Ground Lease, then it shall be entitled to permit the Lessee to continue as tenant of the Lands unless the Mortgagee has acquired the right, title and interest of the Lessee in the Lands under the Ground Lease, in which case the provisions of Section 6 hereof shall apply. For the purposes of this clause, the events contemplated by Article 18 of the Ground Lease shall not constitute a default or contingency.
11. This Agreement shall be deemed to terminate and be of no further force and effect and the obligations, if any, of the Mortgagee under the Lease as tenant shall cease and be of no further force and effect at such time as the Mortgage has been paid in full, has been terminated or released in accordance with the terms and conditions therein contained, or has been released or discharged from the Lands or the Mortgagee has assigned the balance of the Term, as defined in Section 1.1 of the Ground Lease; unless, having obtained an order absolute in foreclosure proceedings against the Lessee, the Mortgagee elects otherwise to continue this Agreement in full force and effect and to be bound as tenant under the Lease.
12. This Agreement shall enure to the benefit of and shall be binding upon the parties hereto, and their respective successors and assigns.
13. The Lessor covenants and agrees with the Mortgagee and the Lessee not to assign or otherwise dispose of its interest in the Lands or its interest in the Ground Lease or any part thereof without first obtaining from the proposed assignee or person to whom such disposition is to be made an agreement to the same effect as set forth herein, such agreement also to contain a covenant on the part of the proposed assignee or person to whom such disposition is to be made to exact a similar agreement from any subsequent assignee or person to whom such dispositions is to be made.
14. The parties hereto agree that upon conversion of the Lands into Leasehold Strata Lots, if any, the Model Strata Lot Lease, as appended to the Ground Lease as Schedule B, shall apply as between the District, the Lessee, and the Mortgagee shall extend to and charge each strata lot lease created by the deposit of the leasehold strata plan and thereafter for purposes of this Agreement references herein to:
 - (a) the Ground Lease shall be a reference to the Model Strata Lot Lease and the applicable provisions (including Addenda) thereof, and
 - (b) the Lessee shall be a reference to the Lessee as strata lot lessee or to the Strata Corporation of the Leasehold Strata Lots as the context requires.
15. This Agreement may be executed in counterparts and will be binding when it has been executed and delivered by all parties.

[Signature page follows]

IN WITNESS WHEREOF this Agreement has been executed on the day, month and year first above and written.

• [LESSEE])
)
)
)
_____)
Authorized Signatory)
)
)
_____)
Authorized Signatory)

• [MORTGAGEE])
)
)
_____)
Authorized Signatory)
)
)
_____)
Authorized Signatory)

THE CORPORATION OF THE DISTRICT OF)
WEST VANCOUVER)
)
_____)
Authorized Signatory)
)
)
_____)
Authorized Signatory)